



STATE OF WASHINGTON

DEPARTMENT OF RETIREMENT SYSTEMS

P.O. Box 48380 • Olympia, WA 98504-8380 • (360) 664-7000 • Toll Free 1-800-547-6657

Contract Number 13-008-100

**BETWEEN THE
STATE OF WASHINGTON DEPARTMENT OF RETIREMENT SYSTEMS
And
[CONTRACTOR]**

This Contract is made and entered into by and between the State of Washington, Department of Retirement Systems, hereinafter referred to as the “Agency”, and [Contractor], hereinafter referred to as “Contractor”:

Contractor Name:

Address:

Phone:

Fax:

E-Mail:

Washington State UBI No:

Federal ID No:

PURPOSE:

The purpose of this contract is to provide assistance with the preparation and evaluation of a Request for Proposals (RFP) to secure third-party record keeping services for the state’s Deferred Compensation Program (DCP) and the defined contribution component of the Teachers’ Retirement System (TRS), School Employees’ Retirement System (SERS) and Public Employees’ Retirement System (PERS) Plan 3. In addition, the Contractor shall provide periodic consulting services as defined in the scope of work to the Agency for the duration of this contract.

NATURE OF RELATIONSHIP:

During the term of this agreement, the Contractor may be consulted, on various occasions, and under varying circumstances, by the Agency for purposes consistent with the functions and assignments described in the scope of work section set forth below.

The Contractor may not perform any work that would cause an increase in the fees set forth herein without specific authority of the Director or the Director’s designee.

SCOPE OF WORK:

- A. The Contractor will provide services and staff, and otherwise do all things necessary for or incidental to the performance of work. The scope of work to be provided by the Contractor includes the following items:
- a. Assistance with the preparation and evaluation of a Request for Proposals to secure third-party recordkeeping services.
 - b. Assistance with the development, negotiation and finalization of a recordkeeping contract(s).
 - c. Consulting services on recordkeeping vendor services and abilities.
 - d. Consulting services regarding IRC, including but not limited to Section 401 (a) and Section 457.
 - e. Consulting services regarding technical and legal questions as necessary.
 - f. Consulting services on performance standards for record keepers.
 - g. Consulting services regarding operational issues and improvements.
 - h. Consulting services on federal legislative changes.
 - i. Consulting services regarding retirement plan design and amendments and regarding drafting new documents and amendments to existing DRS plans.
 - j. Consulting services on additional benefit options and/or plans for consideration by the state; types of plans adopted by other states and public entities; benefits and costs of such plans.
 - k. Miscellaneous consulting services covering issues such as, but not limited to:
 1. Trading restrictions
 2. Investment option issues
 3. Hardship distribution issues
 4. Contribution management
 5. Change of investment funds
 6. Catch-up contribution issues
- B. Exhibit A 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.
- C. All deliverables and written reports required under this contract must be delivered to [Contract Manager].

PERIOD OF PERFORMANCE:

Subject to other contract provisions, the period of performance under this contract will be from [insert date] or date of execution, whichever is later, through June 30, 2017, unless sooner terminated or extended as provided herein.

COMPENSATION AND PAYMENT:

The Agency shall pay an amount not to exceed [spell out dollar amount] (\$) for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. The Contractor's compensation for services rendered shall be in accordance with the rates proposed in the Contractor's proposal, included herein by reference and attached as Exhibit C, for services described in RFP 13-008-100, included herein by reference and attached as Exhibit B.

The Contractor shall produce deliverables associated with the RFP development tasks identified in the contractor's proposal, attached as Exhibit C, according to the proposed schedule therein. Billing for each task will be on an hourly basis with total hours to complete each task not to exceed the proposed estimated hours and fees not to exceed the associated proposed fee.

General consulting tasks requested by the agency throughout the life of this contract will be billed at a rate appropriate for the Contractor consultant performing the task, but will in no case exceed the hourly rates identified in the Contractor's proposal, attached as Exhibit C.

The Agency will not separately reimburse the contractor for business expenses incurred as a result of services provided under this contract.

BILLING PROCEDURES:

The Contractor shall bill the Agency at the end of each calendar month for hours incurred and at the rate(s) agreed upon. Monthly billings must be accompanied by a report indicating tasks worked on, hours spent and percent of completion for each task and include totals for all tasks. Billings must be approved by the Contract Manager before payment will be made.

The Agency will pay the Contractor upon receipt of properly completed invoices, which shall be submitted to the Contract Manager not more often than monthly. The invoices shall describe and document to the Agency's satisfaction a description of the work performed, the progress of the project, and fees. Each invoice will clearly indicate the Agency Contract Number (13-008-100).

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

The Agency may, in its sole discretion, 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 shall be made by the Agency.

The Director or the Director's designee shall have the authority to authorize payment to the Contractor for related work that is beyond the scope of this contract if such payment does not cause total expenditures to exceed the contract amount specified under COMPENSATION AND PAYMENT, *infra*.

CONTRACT MANAGEMENT:

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

Contract Manager for Contractor:	Contract Manager for Agency:
Name	Name
Address	Address
Telephone Number	Telephone Number
Email	Email

INSURANCE:

The Contractor shall provide insurance coverage as set forth in Exhibit B, Request for Proposals No. 13-008-100. The intent of the required insurance is to protect the State and 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 Contractor will name the Agency and the State as additional insureds under its commercial general liability and business auto policies with respect to (i) specific amounts of insurance (and not minimum amounts) and (ii) their vicarious liability arising out of Contractor's performance of services under this Contract.

ASSURANCES:

The 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 shall be resolved by giving precedence in the following order:

- A. Applicable Federal and state of Washington statutes and regulations
- B. Terms and Conditions as contained in this basic contract instrument
- C. Exhibit A – General Terms and Conditions
- D. Exhibit B – Request for Proposals (RFP) 13-008-100
- E. Exhibit C – Contractor's proposal dated [date]
- F. Any other provision, term or material incorporated herein by reference or otherwise incorporated

EXTENSION:

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

CHANGES TO CONTRACT:

The Agency Director may, at any time, by written notification to the Contractor, and without notice to any known guarantor or surety, make changes within the general scope of the services to be performed under the contract. If it is determined by the Director that any such changes cause an increase or decrease in the cost of, or the time required for the performance of this contract, an equitable adjustment may be made in the contract price, or period of performance, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by Contractor of the notice of such change; provided, however, that the Director 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 this contract. Failure to agree to any adjustment shall be a dispute

concerning a question of fact within the meaning of the section of this contract entitled "Disputes." However, nothing in the clause shall excuse the contractor from proceeding with the contract as changed.

LIMITATION OF AUTHORITY

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

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, shall 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 shall be subject to the written approval of the Director and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

THIS contract, consisting of six (6) pages and three (3) exhibits, is executed by the persons signing below who warrant that they have the authority to execute the contract.

Department of Retirement Systems

Contractor

Director Date

Contractor's authorized signer Date

APPROVED AS TO FORM:

Assistant Attorney General Date

**EXHIBIT A -
GENERAL TERMS AND CONDITIONS**

DEFINITIONS

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

- A. "AGENCY" shall mean the Washington State Department of Retirement Systems (DRS), any division, section, office, unit or other entity of the AGENCY, or any of the officers or other officials lawfully representing that AGENCY.
- B. "DIRECTOR" shall mean the Director of the Department of Retirement Systems (DRS), and/or the delegate authorized in writing to act on the Director's behalf.
- C. "CONTRACTOR" shall mean that firm, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the CONTRACTOR.
- D. "SUBCONTRACTOR" shall mean 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" mean SUBCONTRACTOR(s) in any tier.
- E. "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 § 164.50 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 42.17 RCW or other state and federal statutes.

ACCESS TO DATA

In compliance with RCW 39.29.080, the CONTRACTOR shall 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 shall, 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 shall be made by the AGENCY.

AMENDMENTS

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

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, shall be transferred or assigned by the CONTRACTOR without prior written consent of the AGENCY.

ATTORNEYS' 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.

CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

The CONTRACTOR shall not use or disclose any information concerning the AGENCY, including personal information for the members and participants served by the AGENCY, 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. Information supplied by the AGENCY to the CONTRACTOR for performance of services under this contract shall be assumed to be accurate and complete.

The CONTRACTOR shall ensure its directors, officers, employees, SUBCONTRACTORS or agents use information solely for the purposes of accomplishing the services set forth in this agreement. The CONTRACTOR and its SUBCONTRACTORS agree not to release, divulge, publish, transfer, sell or otherwise make agency information known to unauthorized persons without the express written consent of AGENCY or as otherwise required by law. The CONTRACTOR agrees to implement physical, electronic, and managerial policies, procedures and safeguards, as appropriate, to prevent unauthorized access, use or disclosure of data in any form. The CONTRACTOR shall make the personal information available to amend as directed by AGENCY and incorporate any amendments into all the copies maintained by the CONTRACTOR or its SUBCONTRACTORS.

The CONTRACTOR shall not use or disclose personal information in any manner that would constitute a violation of federal law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or any regulations enacted or revised pursuant to the HIPAA provisions and applicable provisions of Washington State law. The CONTRACTOR agrees to comply with all federal and state laws and regulations, as currently enacted or revised, regarding data security and electronic data interchange of all personal information.

The CONTRACTOR shall notify AGENCY in writing within five (5) working days of becoming aware of any unauthorized access, use or disclosure. The CONTRACTOR will take steps necessary to mitigate any known harmful effects of such unauthorized access including, but not limited to sanctioning employees, notifying subjects, and taking steps necessary to stop further unauthorized access. The CONTRACTOR agrees to indemnify and hold harmless AGENCY for any damages related to unauthorized use or disclosure by the CONTRACTOR, its officers, directors, employees, SUBCONTRACTORS or agents.

Any breach of this clause may result in termination of the contract and the demand for return of all PERSONAL INFORMATION.

CONFLICT OF INTEREST

CONTRACTOR warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any significant manner or degree with the performance of services 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 shall 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 shall 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 shall 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 shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the AGENCY. The AGENCY shall be considered the author of such materials. In the event the materials are not considered "works for hire" under the U.S. Copyright laws, CONTRACTOR hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to the AGENCY effective from the moment of creation of such materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. 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 shall 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 shall receive prompt written notice of each notice or claim of infringement received by the CONTRACTOR with respect to any data delivered under this contract. The AGENCY shall have the right to modify or remove any restrictive markings placed upon the data by the CONTRACTOR.

Such materials are solely for the use of the AGENCY, and may not be given to or shared with anyone else, or used for any purpose, other than as contemplated by the contract or as required by law. Notwithstanding anything herein to the contrary, CONTRACTOR retains its rights in its own intellectual capital (such as methodologies, know how, models, tools and any graphic or digitized representation of any of these) developed or possessed by CONTRACTOR prior to or during the performance of the services and the same shall not be deemed "works for hire" and CONTRACTOR shall not be restricted in any way with respect thereto.

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 shall have the right, in the event of breach of this clause by the CONTRACTOR, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or 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 the DIRECTOR.

1. The request for a dispute hearing must:
 - Be in writing;
 - State the disputed issue(s);
 - State the relative positions of the parties;
 - State the CONTRACTOR'S name, address, and contract number; and
 - Be mailed to the DIRECTOR and the other party's (respondent's) contract manager within three (3) working days after the parties agree that they cannot resolve the dispute.
2. The respondent shall send a written answer to the requester's statement to both the DIRECTOR and the requester within five (5) working days.
3. The DIRECTOR shall review the written statements and reply in writing to both parties within ten (10) working days. The DIRECTOR may extend this period if necessary by notifying the parties.
4. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

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

DUPLICATE PAYMENT

The AGENCY shall 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.

GOVERNING LAW

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

INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims 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, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom.

CONTRACTOR'S obligations to indemnify, defend, and hold harmless includes any claim by CONTRACTORS' agents, employees, representatives, or any SUBCONTRACTOR or its employees.

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 shall 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 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 shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the CONTRACTOR fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, AGENCY may collect from the CONTRACTOR the full amount payable to the Industrial Insurance accident fund. The AGENCY may 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 rights to collect from the CONTRACTOR.

LICENSING, ACCREDITATION AND REGISTRATION

The CONTRACTOR shall 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 DIRECTOR or DIRECTOR'S designee (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver 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 shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

NONDISCRIMINATION

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

PRIVACY

Personal information including, but not limited to, "Protected Health Information," collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification or loss. CONTRACTOR shall ensure its directors, officers, employees, subcontractors or agents use 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.

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 shall 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 shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall 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 shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

REGISTRATION WITH DEPARTMENT OF REVENUE

The CONTRACTOR shall 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 shall 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.

The CONTRACTOR shall make available information necessary for AGENCY to comply with the client's right to access, amend, and receive an accounting of disclosures of their PERSONAL INFORMATION according to the Health Insurance Portability and Accountability Act of 1996

(HIPAA) or any regulations enacted or revised pursuant to the HIPAA provisions and applicable provisions of Washington State law. The CONTRACTOR'S internal policies and procedures, books, and records relating to the safeguarding, use, and disclosure of PERSONAL INFORMATION obtained or used as a result of this contract shall be made available to AGENCY.

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 ten-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 shall not affect the validity of the remainder of the contract.

SITE SECURITY

While on AGENCY premises, CONTRACTOR, its agents, employees, or SUBCONTRACTORS shall conform in all respects with physical, fire or other security policies or regulations.

SUBCONTRACTING

Neither the CONTRACTOR nor any SUBCONTRACTOR shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the AGENCY. In no event shall 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 shall 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, the AGENCY has the right to suspend or terminate this contract. Before suspending or terminating the contract, the AGENCY shall notify the CONTRACTOR in writing of the need to take corrective action. If corrective action is not taken within thirty (30) calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the CONTRACTOR shall be liable for damages as authorized by law including, but not limited to, any cost difference between 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 shall 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 may, by ten (10) calendar 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 shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

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 shall apply in such property transfer.

The AGENCY shall pay to the CONTRACTOR the agreed upon price, if separately stated, for completed work and services accepted by the AGENCY, and the amount agreed upon by the CONTRACTOR and the AGENCY for (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 shall determine the extent of the liability of the AGENCY. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The AGENCY may withhold from any amounts due 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 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

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

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 DIRECTOR, 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 DIRECTOR to the extent DIRECTOR may require, which approval or ratification shall 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 DIRECTOR 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 shall not have been terminated by the DIRECTOR; and
7. Take such action as may be necessary, or as the DIRECTOR 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.

TREATMENT OF ASSETS

- A. Title to all property furnished by the AGENCY shall 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, shall 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, shall 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.
- B. Any property of the AGENCY furnished to the CONTRACTOR shall, unless otherwise provided herein or approved by the AGENCY, be used only for the performance of this contract.
- C. The CONTRACTOR shall be responsible for any loss or damage to property of the AGENCY that results from the negligence of the CONTRACTOR or which results from the failure on the part of the CONTRACTOR to maintain and administer that property in accordance with sound management practices.
- D. If any AGENCY property is lost, destroyed or damaged, the CONTRACTOR shall immediately notify the AGENCY and shall take all reasonable steps to protect the property from further damage.
- E. The CONTRACTOR shall surrender to the AGENCY all property of the AGENCY prior to settlement upon completion, termination or cancellation of this contract
- F. All reference to the CONTRACTOR under this clause shall also include CONTRACTOR'S employees, agents or SUBCONTRACTORS.

U.S. DEPARTMENT OF TREASURY, OFFICE OF FOREIGN ASSETS CONTROL

The agency complies with U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) payment rules. OFAC prohibits financial transactions with individuals or organizations, which have been placed on the OFAC Specially Designated Nationals (SDN) and Blocked Persons sanctions list located at <http://www.treas.gov/offices/enforcement/ofac/index.html>. Compliance with OFAC payment rules ensures that the agency does not conduct business with individuals or organizations that have been determined to be supporters of terrorism and international drug dealing or that pose other dangers to the United States.

Prior to making payment to individuals or organizations, the AGENCY will download the current OFAC SDN file and compare it to agency and statewide vendor files. In the event of a positive match, the agency reserves the right to: (1) make a determination of "reasonability" before taking the positive match to a higher authority, (2) seek assistance from the Washington State Office of the State Treasurer (OST) for advanced assistance in resolving the positive match, (3) comply with an OFAC investigation, if required, and/or (4) if the positive match is substantiated, notify the CONTRACTOR in writing and terminate the contract according to the Termination for Convenience provision without making payment. The AGENCY will not be liable for any late payment fees or missed discounts that are the result of time required to address the issue of an OFAC match.

WAIVER

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