2015 Professional Services Contract Manual

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OFFICE OF THE INDIANA ATTORNEY GENERAL

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INDIANA DEPARTMENT OF ADMINISTRATION

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Table of Contents

Introduction 4
Frequently Asked Questions 5
What to Know before Beginning the State Contracting Process 8
Guidelines for Ethical Contracting Practices 8
Minority and Women's Business Enterprises Division 8
Veteran's Business Enterprise Program 9
Employment Eligibility Verification 9
Independent Contractor Determination 10
STATE CONTRACTING PROCESS 14
1. Determining Agreement Type 15
Contracts 15
Grants 15
MOUs 15
Contract vs. Grant 15
Contract vs. MOU 19
2. How to Choose a Contractor/Grantee 20
3. Draft Agreement 24
Professional Services Contract Development 24
Amendment Development 46
Renewal Development 51
Addendum Development 54
Grant Development 73
Development of Contract between the State and State Institutions of Higher Education 85
4. Contractor/Grantee Signature 95
5. Agency Signature 95
6. Create an EDS Sheet 95
7. State Signature Process 96
Contract Approval Process 96
Intranet Contract Tracking System 97
1. IOT Approval 97
2. IDOA Approval 98
3. Budget Approval 98

4. Attorney General Approval 98
5. Scanning 99
Exceptions to the Process 100
Outside Counsel 100
Form Approval 100
Rush Contracts 104
Citation List 105
Notes 106

Introduction

The Office of the Indiana Attorney General and the Indiana Department of Administration are pleased to present the *2015 Professional Services Contract Manual*.

The *Manual* is intended to assist state agencies in the preparation of professional services contracts and to provide information on how contracts and grant agreements should be submitted through the approval process.

Please review the *Manual* carefully. It will guide you in the preparation of personal/professional service contracts and grant agreements. If your agency has a staff attorney, you should contact him or her first regarding any questions you may have. If you still have questions, please feel free to contact a member of the IDOA Contract Management Section.

Department of Administration Contract Management Section:

Tim Grogg	(317) 234-1596	tigrogg@idoa.in.gov
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If you have suggestions for improving the *Manual* or the contract review process, please let us know!

Frequently Asked Questions

Do I need an EDS (Executive Document Summary) with every contract I submit?

Yes. A contract cannot be routed through the signature process without a fully completed EDS. The EDS form is available on-line through PeopleSoft Financials at http://www.in.gov/idoa/2525.htm. Use of the EDS sheet is covered in greater detail later in this manual.

How do I assign an EDS number to an agreement?

Each agency is assigned one or more Agency Requisition Prefix codes to begin the EDS number. The Agency Requisition Prefix code usually consists of a letter followed by two or three numbers (i.e., IDOA's code is C39). The EDS number consists of (1) an Agency Requisition Prefix code, (2) last two digits of fiscal year (the fiscal year runs July 1 – June 30; fiscal year '13 began July 1, 2012, the second part of the EDS number would be 13), and (3) a combination of letters or digits in an order that your agency finds most helpful in contract management. If you do not know your agency's APS code, you should send an e-mail to contracts@idoa.in.gov. We will assist you in getting that information.

If the vendor is an individual, should I list he/she/its personal identification number on the EDS sheet?

The State Auditor assigns all state vendors a unique identification number. This number is required in Box 23 on the EDS sheet. Under no circumstances should you place an individual's social security number ("SSN") on the EDS sheet. Contracts and the EDS sheets are public records. You should ensure that these documents do NOT include an individual's social security number. A state employee commits a Class D Felony if he /she knowingly, intentionally, or recklessly discloses a SSN in violation of Indiana Code 4-1-10. The negligent release of a SSN may result in conviction for a Class A Infraction. Moreover, all contracts are scanned and are available on line after they are approved.

What documents, in addition to the contract, are needed for approval?

In addition to the contract, any exhibits or attachments referenced in the contract must be submitted for approval. If you are submitting an amendment or renewal, you MUST include the underlying contract and all of its exhibits and attachments and all previous amendments and the exhibits and attachments to the amendments.

Can I draft clauses outside of the boilerplate?

Absolutely. While the *Manual* outlines clauses that are mandatory in contracts, it really provides a basic framework for your contracting needs. Consult with your agency attorney regarding additional clauses.

Can I renew or amend a contract after the expiration date?

No. An expired contract or grant cannot be renewed or amended. If you want to renew or amend a contract or grant, you must have the contractor's (or grantee's) signature on the renewal or amendment prior to the expiration of the original contract. If you are doing a straight renewal where no consent or agreement of the contractor is required, then the signature of the agency is required prior to the expiration of the underlying term.

Do I need a Non-Collusion Statement in an amendment or a renewal?

Yes, always. This clause must be included in all amendments and/or renewals. The ability to collude becomes greater once a relationship has been established with a contractor or grantee.

What is the difference between an amendment and a renewal?

An amendment changes or adds to the terms or conditions of an existing contract/grant. A renewal brings all the original terms and conditions forward for another term but does not add any additional terms or conditions. If you desire to renew the terms of your contract/grant as well as add new terms or conditions, including any new statutorily required clauses, (e.g. Employment Eligibility) to your contract/grant, you need to use the amendment template. The OAG signature is not required for renewals, but is required on all amendments.

What is the difference between an amendment and an addendum?

An amendment changes or adds to the terms or conditions of an existing contract. An addendum is to be attached to a contractor's form contract for purposes of deleting terms to which the state cannot agree and adding the mandatory clauses required in any state contract. *The state should NOT sign the form contract – only the addendum*.

Do I need to seek competition when selecting a vendor?

Absolutely. Analysis and discussion of the procurement process and the use of Request for Proposals [RFPs] and bids is beyond the scope of materials covered in this manual. You should become thoroughly familiar with IC 5-22 if there is any question about the type of competition and procurement you should use in pursuing a particular contract. Even Special Procurements under IC 5-22-10 require documentation and the approval of IDOA's Commissioner. You may request approval from IDOA's Commissioner by filling out the Special Procurement request form available at http://intranet.idoa.state.in.us/contract/administration.stm.

May I use an out-of-state vendor?

Yes. When dealing with solely State funded contracts and grants, Agencies may use an out of state vendor if it is necessary, but great efforts should be made to keep this to a minimum. If it is necessary to use an out-of-state contractor, *a justification should accompany the contract.*

When dealing with federally funded contracts and grants, no preference can be given to state or local providers even if state or local law states otherwise. See 2 C.F.R. §200.319

Are templates available for contracts, grants, addendums, etc.?

Yes. You can find templates in MS word format for contracts, grants, amendments, addendums and contracts with state educational institutions on the IDOA intranet at http://intranet.idoa.state.in.us/contract/administration.stm.

My contract has been pre-approved by the Attorney General's Office but denied by IDOA. How can that happen?

IDOA and the OAG serve different functions in the contract approval process. While the OAG reviews contracts for form and legality, IDOA focuses on policy, contract language and procedures, and business issues. Just because the contract is legal does not mean that underlying transaction is consistent with the state's policies, purchasing procedures, or that it is in the state's best interests.

Does IOT need to approve my contract?

Any contract that includes information technology goods or services must be reviewed by IOT so that IOT can ensure that the goods and/or services are compatible with the state's policies and current IT investment. Examples include the procurement of hardware (anything with a processor), software and software licenses and maintenance agreements, software application development, website development, database access through the internet, data sharing and cabling. Moreover, outsourcing data entry contracts almost always involve IT issues. IOT's IT policies, standards and guidelines are available at http://www.in.gov/iot/architecture. If you are unsure about whether your contract will require IOT approval or if you have any other questions, please contact IOT at iotcontract@iot.in.gov or (317) 232-3172.

Can I have a contract for more than four years?

It is IDOA's policy that a contract shall not exceed four years. If, however, you have a compelling business reason to exceed the four-year limit, you may do so, but you must first obtain written approval from the IDOA Contract Administration. This approval should be sought well in advance of the expiration of an existing contract.

What do I do when I need to rush through a contract?

Send an e-mail to contracts@idoa.in.gov, toTDolph@sba.in.gov, and to contracts@atg.in.gov. If your contract needs IOT approval also send an email to iotcontract@iot.in.gov. You will need to provide the EDS number, name of Contractor, the reason for requesting the rush, and the anticipated delivery time to IDOA. Please do not show up with a rush and expect to wait while someone reviews it. Also, do not have a vendor call directly. If you give us advance notice and a reasonable explanation, we will make every effort to accommodate you.

Can I submit a contract with faxed or stamped signatures?

No. Only contracts with original signatures will be approved.

Can I submit a contract without a vendor signature?

No. The state should always be the last party to sign the contract so we know exactly what is being approved. The OAG must be the last party to sign the contract or it will be rejected unless it was granted form approval by the OAG. In cases where the OAG has granted form approval, IDOA and Budget must be the last entities to sign.

What is the policy on approving duplicate originals?

IDOA, Budget, and the OAG strongly discourage the routine use of duplicate originals. We anticipate requiring those few agencies that seem to use them routinely to justify why two or more originals are necessary.

Do I have to print my contract on double-sided paper?

Executive Order 05-21 requires that all "agencies shall duplex (double side) all copy and laser printing operations. Exceptions will be made when current technology does not allow for this provision or when specific documents require single-side printing."

How does the scanning process work?

Once a contract has been approved by the OAG, it is picked up by Pitney Bowes Management Services, scanned, and returned to IDOA. IDOA will notify you via email when the contract(s) is/are ready to be picked up.

What to Know before Beginning the State Contracting Process

Guidelines for Ethical Contracting Practices

Elected and appointed state officials and state employees are entrusted with the safety and welfare of taxpayers. Citizens are entitled to have complete confidence in the integrity of their government and expect state employees' private interests will not conflict with public business. To maintain the integrity and credibility of contracting, a clear set of guidelines, rules and responsibilities to govern the behavior of State employees is required.

General standards of ethical conduct for state employees are enumerated in 42 IAC 1-5-1 through 16; and 42 IAC 1-6-2. A state employee who violates either of these statute sections or rules may be subject to State Ethics Commission sanctions and/or agency disciplinary action. Pursuant to 42 IAC 1-7 and 42 IAC 1-8, state employees may have any ethics question reviewed and decided by the State Ethics Commission. If you have a question about a specific action, please contact the State Ethics Commission directly.

For complete information regarding ethical practices in contracting, refer to the Inspector General's website at http://www.in.gov/ig/ or call the Ethics Commission at (317) 232-3850.

Social Security Number Protection and Breach Notification

State agencies are required to exercise an enhanced level of due diligence in the protection of social security numbers from public dissemination. It is the agency's responsibility to ensure that individual social security numbers are redacted from all contract documents, including EDS sheets, underlying contracts prepared before the new law took effect, amendments, renewals, supplements, or any other collateral document that is submitted with a contract for approval.

For the specific statutory requirements and exceptions regarding disclosure, please see IC 4-1-10. For the processes that agencies must follow regarding notification in light of a breach, please see IC 4-1-11.

The penalties assessable for the unlawful release of a social security number can range from a Class A infraction up to a D felony, depending on the nature of the release and the actions taken by the agency/employee towards prevention. The OAG has adopted administrative rules under 10 IAC 5 to assist agencies with their compliance efforts.

Minority and Women's Business Enterprises Division

IDOA's Minority and Women's Business Enterprises ("M/WBE") division is established by IC 4-13-16.5. As required by statute, the M/WBE division identifies and certifies minority and women's business enterprises for state projects. The statute also requires "all state agencies, separate bodies corporate and politic, and state educational institutions to report [to the division] on planned and actual participation of minority and women's business enterprises in contracts awarded by state agencies," and "determine[s] and define[s] opportunities for minority and women's business participation in contracts awarded by all state agencies, separate bodies corporate and politic, and state educational institutions."

The Division works with the Governor's Commission on Minority and Women's Business Enterprises to establish annual goals for the use of minority and women's business enterprises. These goals are to be derived from a statistical analysis of the utilization study of state contracts that is required to be updated

every five (5) years. Inclusion of a contractor's utilization of a minority or women's business in the contract itself is a tool used by the M/WBE division to ensure compliance with 25 IAC 5.

Veteran's Business Enterprise Program

The Indiana Veteran's Business Enterprise Program was instituted when Governor Pence issued Executive Order 13-04 to provide additional economic opportunities by setting a goal of Indiana veteran-owned businesses ("IVBE") achieving at least 3% of the State of Indiana's competitive purchase of goods and services. The General Assembly later codified this mission in Indiana Code 5-22-14-3.5.

The goal of the program is to help men and women who return home after serving their country to start or expand their own business. In doing so, the state will seek business opportunities with IVBEs for public works projects and contracts. Annually, IDOA is required to prepare and submit a report to the Governor and to the public, which shall describe the activities and efforts conducted by the state and the outcome, progress and the achievements made by this initiative.

To be eligible for the program, an Indiana firm must have its principal place of business located in Indiana and be certified by the Department of Veterans Affairs as a veteran-owned business. The State of Indiana will utilize the Federal Center for Veterans Business Enterprise and its VetBiz registry that follows the guidelines as set by Veterans Business Regulations (38CFR Part 74) to determine eligibility.

Employment Eligibility Verification

All state Contractors for services and recipients of grants of over $1,000 must enroll in the E-Verify program and affirm that they do not knowingly employ unauthorized aliens. See IC 22-5-1.7-1 et. seq. The U.S. Department of Homeland Security's E-Verify program is a free Internet-based system that allows businesses to determine the eligibility of their employees to work in the United States.

All state agencies are required to include the boilerplate "Employment Eligibility Verification" clause in their contracts for services. "Services" are defined in the public purchasing statute at IC 5-22-2-30 as "the furnishing of labor, time, or effort by a person, not involving the delivery of specific supplies other than printed documents or other items that are merely incidental to the required performance."

All grants of over $1,000 must include either the grant agreement clause or the signed affidavit. State agencies are strongly encouraged to use the "Employment Eligibility Verification" clause for their grant agreements. State agencies, in lieu of the grant clause, may elect to have the Grantee sign an affidavit which is also provided in this manual. The affidavit must be attached to the grant agreement.

In addition, state agencies need to ensure that their Contractors and Grantees have enrolled and are participating in the E-Verify program. Contractors and Grantees who are self-employed and who do not have any employees need not enroll or participate in the E-Verify program.

If you are contracting with another state agency, local political subdivision, a state institution of higher education, or another state the clause is not required to be in your contract or grant.

In order to enroll in the E-Verify program Contractors and Grantees may visit: https://e-verify.uscis.gov/enroll/. The E-Verify program is **free** to enroll in and use.

More information on the E-Verify program can be found at: http://www.dhs.gov/e-verify.

Independent Contractor Determination

It is your responsibility to ensure all Contractors and employees are appropriately classified. Personal Service contracts which create or appear to create an employment relationship under IRS guidelines cause grave tax consequences for the state and potential inequities to the individuals providing the services. A decision by IDOA to deny a contract due to a determination that an employee status would be created is final. If your contract appears to contain several employee indicators, you may wish to contact an IDOA representative for guidance. Your agency may be required to analyze in writing the service sought in relation to the IRS factors. If so, the agency must retain the analysis and keep it in the particular contract file for audit purposes. The IRS's most recent independent contractor test is located at http://www.irs.gov/pub/irs-pdf/p15a.pdf.

Electronic Contracting Process

Statutory Background

The Uniform Electronic Transactions Act is a uniform statute preparing state law for the electronic commerce era. Indiana adopted the Uniform Electronic Transactions Act at IC 26-2-8. IC 26-2-8-202 authorizes governmental agencies to determine whether, and the extent to which, they will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.[1]

Electronic records, electronic signatures, and electronic contracts are recognized and enforceable under the law. IC 26-2-8-106 provides the following:

> (a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
> (b) A contract may not be denied legal effect or enforceability solely because an electronic record or electronic signature was used in its formation.
> (c) If a law requires a record to be in writing, or provides consequences if it is not, an electronic record satisfies the law.
> (d) If a law requires a signature, or provides consequences in the absence of a signature, the law is satisfied with respect to an electronic record if the electronic record includes an electronic signature.

While most private contracts need only the parties to sign the contract for it to be valid, IC 4-13-2-14.1(a) requires that "A contract[2] to which a state agency is a party must be approved by … the Indiana Department of Administration … the budget agency … and the attorney general." In addition, Indiana Code 4-13.1-2-2 provides that the Indiana Office of Technology shall "[r]eview … proposed contracts relating to information technology at the request of the budget agency", and the Budget Agency has requested that IOT review all such contracts.

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[1] IC 26-2-8-102 (10) defines an "Electronic signature" as "an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record."

[2] "Contracts" include grants, and when used in this document, "contractor" also means "grantee". While "contracts" also include leases and some other real property transactions, the process described in this document is not available for real property transactions or any other transactions which may require recordation or notarization.

Indiana Code 4-13-2-14.1 (c) provides:

> The Indiana department of administration may adopt rules under IC 4-22-2 to provide for electronic approval of contracts. Electronic approval may include obtaining the equivalent of a signature from all contracting parties using an electronic method that does not comply with IC 5-24 (the electronic digital signature act), so long as the method allows the party to read the terms of the contract and to manifest the party's agreement to the contract by clicking on an "ok", an "agree", or a similarly labeled button or allows the party to not agree to the contract by clicking on a "cancel", "don't agree", "close window", or similarly labeled button. Rules adopted under this subsection must provide for the following:
>
> (1) Security to prevent unauthorized access to the approval process.
>
> (2) The ability to convert electronic approvals into a medium allowing persons inspecting or copying contract records to know when approval has been given.

For contracts subject to IC 4-13-2-14.1, the State will send and accept electronic records of contracts and electronic signatures under IC 26-2-8-202. The following process is the only approved process for the electronic signing and approval of state contracts and will govern until such time as IDOA may adopt rules as contemplated by IC 4-13-2-14.1(c).

Use of PeopleSoft and the IDOA Supplier Portal

All electronic contracting will use the PeopleSoft Supply Contract Module ("SCM"). PeopleSoft Financials (branded ENCOMPASS by the State) serves as the State's official book of record, and is a State-owned and supported system. Through the Indiana Office of Technology, security measures are in place to ensure the preservation of all recorded data with detailed plans for data disaster recovery, including hot and cold sites.

PeopleSoft and the SCM are accessible only through the State's Supplier Portal administered by Indiana Department of Administration. Each contractor or grantee is required to complete the State's supplier registration process and obtain a unique PeopleSoft identification password. This process ensures the contractor understands the electronic signature process and agrees to execute contracts in that manner.

The State's template contracts and grants are loaded into the SCM by IDOA or IOT personnel and will be kept updated without intervention by the agency. Contract templates that have been form-approved by the Office of the Attorney General will also be loaded into the SCM. The SCM allows the contractor, the vendor, and all state agency reviewers to see changes to the standard template language.

Security

A user ID and password is required for each individual who will access contract documents, both during review and negotiation, and at the time of signature.

User IDs are unique to each individual. Passwords are set by the State's supplier registration system and provided electronically masked to the user. The user has the control to change his or her password and that password, whether portal or user-created, cannot be unmasked by anyone, including the State.

The person who will be signing the contract electronically will be assigned a unique ID and password in order to access contract documents for signature through the State's Supplier Portal. The name of the person who will be signing and his/her ID and password will be verified as the contract administrator prepares a document for external signature.

Contractors may have multiple signatories, but each individual is required to e-sign documents while logged into the Supplier Portal/PeopleSoft under his/her own user ID and password.

A historical log of all system access and eSignature activity (the contractor and the State) is maintained in SCM records, and identified by user with a date/time stamp documenting the specific action. This information is also displayed within the application through navigation to SCM Document Management and Document History.

eSignature[3]

The Adobe electronic signature tool in Adobe is used in signing contract documents electronically ("eSignature"). It is an electronic signature under IC 26-2-8, and was selected based on several determining factors including:

Security in using PDF documents not available with other formats.
No cost for contractors
Ease of use
Compliance with IC 4-13-2-14.1 and IC 26-2-8

The eSignature Procedure

The State prepares a contract document for external electronic signature by the contractor, verifying that the contractor's authorized signatory has been issued a user ID and password to access the State's Supplier Portal. A system-generated notification is sent by email to the contractor as an alert that a contract document requires their review and signature.

The contractor's authorized signatory must log into the State's Supplier Portal using his / her assigned user ID and password, and download the contract document in Adobe PDF.

The contractor uses the Adobe signature tool to place his / her signature on the State's contract document. The contractor has agreed to conduct business electronically at the time of registration on the Supplier Portal. This agreement is affirmed by the following statement which immediately follows the Non-Collusion and Acceptance clause and immediately precedes the eSignature:

> *I agree, and it is my intent, to sign this Contract by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Contract to the State of Indiana. I understand that my signing and submitting this Contract in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Contract and this affirmation. I understand and agree that by electronically signing and submitting this Contract in this fashion I am affirming to the truth of the information contained therein. I understand that this Contract will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database*
> http://www.in.gov/idoa/2354.htm.

Completion of the Contract

The signed PDF document is uploaded into PeopleSoft by the contractor.

The State's contract administrator is notified by e-mail when the contractor has signed and uploaded the document. Using the same procedure as the contractor, the State signs the document electronically.

[3] The system selected does **not** utilize "digital signatures" as defined by IC 5-24-2-1.

With the eSignatures in place, the contract administrator routes the document for approval, using the electronic process by the necessary oversight agencies (IOT if applicable, IDOA, SBA, OAG) through a predetermined workflow based on the document requirements.

When the required signatures and approvals are complete, the contract administrator dispatches the contract. Each evening, an automatic process in the system will select all newly-executed contracts and send a copy to the contractor and the IDOA Contract Division.

The IDOA Contract Division will move the contract to the State's Transparency Portal for public view.

Legal Effect
Contracts formed using the preceding procedures are deemed in writing and will not be denied legal effect or enforceability solely because they are in electronic form.

STATE CONTRACTING PROCESS

1. Determining Agreement Type

Contracts

Contracts are agreements which set up the standard buyer-seller relationship. They are to be used when an agency wishes to buy, lease or exchange property or services for the direct benefit of the agency.

Grants

Grants are agreements where the agency transfers money, property, services or anything of value to the recipient in order for the recipient to accomplish a public purpose of support or stimulation. The agency's role in these agreements is passive or nonexistent during the performance of the activity.

MOUs

MOUs are agreements used to memorialize agreements between state agencies, and document an arrangement under which two agencies share a responsibility, or where one agency agrees to perform duties on behalf of the other (where the duties could be within the statutory authority of either agency).

Contract vs. Grant

The terms "contract" and "grant" are often used interchangeably, and this misuse results in operational inconsistencies, confusion, inefficiency and waste. The confusion stems from the fact that a contract and a grant contain the same essential elements: competent parties, lawful subject matter, sufficient consideration and consent of minds. However, contracts create "state procurement relationships" and grants create "state assistance relationships." IDOA and OAG will reject documents from State agencies that attempt to avoid the competitive procurement process necessary for a contract by inappropriately framing a contract as a grant. Each agency is responsible for reviewing the funding source that supports the grant or contract to assure the proper agreement is utilized.

A procurement contract should be used whenever the agency wishes to buy, lease, or exchange property or services for the direct benefit of the state agency. This is the standard buyer-seller relationship. Also, when a state agency's principal purpose is to acquire an intermediary's services, which ultimately may or may not be delivered to an authorized recipient, then a contract is required. When the term "competitive procurement" (*i.e*. the use of RFPs) is used, it refers to contracting for goods and services under a sealed bid or competitive negotiation procedure, and does not usually include grant proposals. For example, when an agency hires a private entity to perform a function or a duty which the state agency otherwise would perform itself, a procurement contract is necessary. Contracts contain clearly defined deliverables (i.e. what you are purchasing) that tie the duties of the contractor to payment.

Conversely, when the relationship established is for the transfer of money, property, services or anything of value to the recipient to accomplish a public purpose of support or stimulation, and the state agency's role is passive or no state agency involvement is anticipated during the performance of the activity, then a grant award is created. The purpose of a grant is to benefit some identified segment of the public, rather than the state agency. Furthermore, the authorization to expend public funds typically comes from the legislative body.

The state agency, in essence, acts as a patron of the grantee. As a grantor, the state agency's purpose is only to assist an intermediary in providing goods or services to an authorized recipient. A grantee is normally free to choose for itself the best means to implement the grant purpose, subject only to the applicable statutes and the terms of the grant agreement. The state agency is typically responsible for

setting strict criteria to ensure upfront that the grant recipient is qualified and competent; not infrequently, these criteria are set out in general terms in the enabling legislation.

Grants may require the Grantee to do the following: comply with various record-keeping requirements; abide by certain requirements regarding the purchase and ownership of equipment; submit budgets concerning cost allocation, cost sharing, the retention of consultants, travel expenses and the treatment of certain income earned as a result of the grant; obtain Grantor's written approval before making significant changes; comply with various federal statutes; and make progress reports and final reports to the Grantor.

As such, a Grantor may evaluate the progress of a Grantee by review of technical or fiscal reports or by site visit, to determine that performance is consistent with objectives, terms, and conditions of the award, and a Grantor may require a Grantee to abide by general statutory, regulatory or administrative policy requirements. However, a grant should not contain clearly defined deliverables (i.e. there is no specific purchase like a contract) that tie the duties of the contractor to payment.

An example of the appropriate use of a contract and a grant: A state agency is mandated by statute to administer a program in which Federal funds are passed through to local entities for the provision of day care to disadvantaged mothers. If the state agency wishes to administer that program with its own staff, the document used to pass through the funds to the actual day care providers would be a grant agreement. If the state agency wishes to agree with a company to assist in the administration of that program, an express duty of the state agency itself, a contract would be required.

The following form is a convenient checklist the federal government has developed for federal pass-through grants to sub-recipients. It should be consulted and used whenever necessary.

SUBRECIPIENT AND CONTRACTOR DETERMINATION FORM (SCX-17)

Entity_____ Financial Statement Date_____

Completed by_____ Date_____

Subrecipient/Contractor_____

Instruction: An auditee may be a recipient, a subrecipient, and/or a Contractor. This form is designed to help determine whether an organization receiving federal awards from a pass-through agency should be considered a subrecipient or a Contractor for single or program-specific audit purposes. It does not apply for–profit subrecipients.

It is not expected that all of the characteristics will be present and judgments should be used, along with the help of the pass-through entity and/or the cognizant agency, in determining whether an entity is a subrecipient or Contractor. There may be unusual circumstances or expectations to the listed characteristics. In making the determination, the substance of the relationship is more important that the form of the agreement.

You should answer all questions for both of the organizations. Each question should be answered either "yes" (Y) or "no" (N). A "yes" answer is indicative of the type of relationship being reviewed. Space is provided for a concise comment if needed. After completing the questionnaire document your conclusion in Part 3.

Section references (Sec.) throughout the form are in 2 CFR 200.

Part 1 – Subrecipient. (The following questions relate to characteristics of an award that are indicative of a subrecipient relationship.)

	Y	N	COMMENTS
1. Does the entity receiving the funds from the pass-through entity determine who is eligible to receive the Assistance? (Sec. 330(b)(1)]	____	____	
2. Does the contract or agreement include performance requirements that are measured against whether the objectives of the federal program are met? [Sec. 330(b)(2)]	____	____	
3. Does the entity that receives the funds from the pass-through entity have programmatic decision-making responsibility? [Sec.330(b)(3)]	____	____	
4. Does the contract or agreement with the entity receiving the funds from the pass-through entity state that the entity is to comply with all applicable federal program compliance requirements? [Sec. 330(b)(4)]	____	____	
5. Are the federal funds being used to carry out a program of the entity receiving the funds from the pass-through entity as opposed to providing goods or services for a program of the pass-through entity? [Sec. 330(b)(5)]	____	____	

Part 2 – Contractor. (The following questions relate to characteristics of payments that are indicative of a Contractor relationship.)

	Y	N	COMMENTS
1. Is the entity providing goods or services within its normal business operations? [Sec. 330(c)(1)]	____	____	
2. Does the entity provide similar goods or services to many different purchasers? [Sec. 330(c)(2)]	____	____	
3. Does the entity operate in competitive environment? [Sec. 210(c)(3)]	____	____	
4. Are the goods or services provided ancillary to the operation of the federal program? [Sec. 330(c)(4)]	____	____	
5. Is there no requirement in the contract or agreement with the entity receiving the funds (from the pass-through entity) that the entity is to comply with all applicable federal program compliance requirements? [Sec. 330(c)(5)]	____	____	

Part 3 – Conclusion. Based on a preponderance of "yes" answers and discussions with appropriate personnel, this entity has been determined to be a: (check one)

Subrecipient _____

Contractor _____

Comments: _____

_____

_____

_____

_____

_____

_____

_____

_____

Contract vs. MOU

MOUs are used to memorialize agreements between state agencies, and document an arrangement under which two agencies share a responsibility, or where one agency agrees to perform duties on behalf of the other (where the duties could be within the statutory authority of either agency). The subject matter of a MOU may or may not provide for the transfer of funds between or among agencies. The State Budget Agency's Financial Management Circular #2009-2, dated September 21, 2009 sets out the requirements for a MOU (http://www.in.gov/sba/files/fmc_2009-02.pdf). **For the latest circular, please refer to the SBA website:**

http://www.in.gov/sba/2512.htm

Due to the possibility of direct or indirect state fiscal impact related to the procurement of goods and services, this Circular is published jointly by the SBA and the IDOA to provide policy and procedural guidance to state agencies regarding financial transactions between or among Executive Branch agencies. This Circular applies to all instrumentalities (hereafter referred to as "state agencies") of the Executive Branch, including all bodies corporate and politic, excluding only state educational institutions (as defined in IC 20-12-0.5-1), the Secretary of State, the Auditor of State, the Treasurer of State, the Lieutenant Governor, the Attorney General, and the offices of these separately elected officials.

All MOU's must be signed by the parties (agencies) to the MOU and SBA.

Agreements between an Executive Branch agency and another unit of government that has the capacity to sue or be sued must be memorialized by a contract that is subject to review under IC 4-13-2-14.1. This includes agreements with the federal government, state universities, school corporations, and local units of government. Such contracts may deviate from the required state boilerplate by deleting clauses inappropriate to another governmental entity.

An arrangement between two or more state agencies that do not have the power to sue or be sued must be memorialized by a MOU that clearly describes the performance responsibilities of the parties. Although bodies corporate and politic and separately elected offices have the capacity to sue and be sued, state agencies may use a MOU when dealing with a body corporate and politic or separately elected office. For questions concerning whether a MOU or contract is an appropriate tool to memorialize an agreement, please contact contracts@idoa.in.gov or IDOA's contract division.

MOUs are required to be signed by all state agencies appointing authorities or designees party to the document. The document will be input to PeopleSoft using the Executive Document Summary ("EDS"). The EDS (State Form 41221) should be attached to the MOU with the appropriate boxes completed including Box 40 and 41, then routed to SBA for review and approval. State agencies party to the MOU should designate a "lead agency" to route the document. Upon approval, the SBA will return the document to the lead state agency. It will be the lead state agency's responsibility to forward a copy of the approved document to all state agencies party to the MOU.

On a quarterly basis, IDOA will compile a report from PeopleSoft using the EDS information, and will use it to monitor the MOUs to ensure that the agreement is between appropriate entities. If IDOA determines that a MOU is not appropriate, the respective agencies and Budget will be notified.

SBA Circulars Relevant to Contracts or MOU's

98-2	Delegation to IDOA for Procurement Contract Approval under $25,000
2003-1	Travel, Moving, and Interviewing Policies
2007-1	Language for Termination of Contracts for Lack of Funds
2007-3	Indiana Office of Technology
2009-2	Memorandums of Understanding (MOU's) and Memorandums of Agreements (MOA's)

2. How to Choose a Contractor/Grantee

IC 5-22-6-1 provides that "the purchasing agency of a governmental body may purchase services using any procedure the governmental body or the purchasing agency of the governmental body considers appropriate." IDOA construes "any procedure the . . . agency considers appropriate" to mean one of those described in IC 5-22: a bid, a proposal, or a special procurement under IC 5-22-10.

Special Procurements

Those involved with state contracting should become familiar with the special procurement statute. If you are not obtaining a service under a bid or an RFP, then it must fit one of the categories permitted by IC 5-22-10. Additionally, you must request approval from IDOA for a special procurement by filling out the Special Procurement Request form available at http://intranet.idoa.state.in.us/contract/administration.stm. Even then, the agency is expected to obtain quotes and maintain documentation of the efforts made to maximize competition. IC 5-22-10 describes the circumstances under which a Special Procurement is permitted:

IC 5-22-10-1. Purchase without soliciting bids or proposals. Notwithstanding any other provision of this article, a purchasing agent may make a purchase under this chapter without soliciting bids or proposals.

IC 5-22-10-2. Competition. A special purchase must be made with competition as is practicable under the circumstances.

IC 5-22-10-3. Contract files; record listing all contracts.

(a) A purchasing agent shall maintain the contract records for a special purchase in a separate file.
(b) A purchasing agent shall include in the contract file a written determination of the basis for:
  (1) the special purchase; and
  (2) the selection of a particular contractor.
(c) Notwithstanding any other law, a governmental body shall maintain a record listing all contracts made under this chapter for a minimum of five (5) years. The record must contain the following information:
  (1) Each contractor's name;
  (2) The amount and type of each contract;
  (3) A description of the supplies purchased under each contract.
(d) The contract records for a special purchase are subject to annual audit by the State Board of Accounts.

IC 5-22-10-4. Emergency conditions.

(a) A purchasing agent may make a special purchase when there exists, under emergency conditions, a threat to public health, welfare, or safety.

(b) The counterterrorism and security council established by IC 10-19-8-1 may make a purchase under this section to preserve security or act in an emergency as determined by the governor.

IC 5-22-10-5. Savings to governmental body. A purchasing agent may make a special purchase when there exists a unique opportunity to obtain supplies or services at a substantial savings to the governmental body.

IC 5-22-10-6. Auctions. A purchasing agent may make a special purchase at an auction.

IC 5-22-10-7. Data processing contract or license agreements. A purchasing agent may make a special purchase of data processing contracts or license agreements for: (1) software programs; or (2) supplies or services, when only one (1) source meets the using agency's reasonable requirements.

IC 5-22-10-8. Compatibility of equipment, accessories, or replacement parts. A purchasing agent may make a special purchase when: (1) the compatibility of equipment, accessories, or replacement parts is a substantial consideration in the purchase; and (2) only one (1) source meets the using agency's reasonable requirements.

IC 5-22-10-9. Purchasing method impairs functioning of agency. A purchasing agent may make a special purchase when purchase of the required supplies or services under another purchasing method under this article would seriously impair the functioning of the using agency.

IC 5-22-10-10. No offer received under other purchasing method. A purchasing agent may make a special purchase when the purchasing agency has solicited for a purchase under another purchasing method described in this article and has not received a responsive offer.

IC 5-22-10-11. Evaluation of supplies or system containing supplies. A purchasing agent may make a special purchase for the evaluation of supplies or a system containing supplies for any of the following reasons: (1) To obtain: (A) functional information; or (B) comparative data; (2) For a purpose that in the judgment of the purchasing agent may advance the long term competitive position of the governmental body.

IC 5-22-10-12. Governmental discount available. A purchasing agent may make a special purchase when the market structure is based on price but the governmental body is able to receive a dollar or percentage discount of the established price.

IC 5-22-10-13. **Single source for supply; award of contract.** Subject to sections 14 and 15, a purchasing agent may award a contract for a supply when there is only one (1) source for the supply and the purchasing agent determines in writing that there is only one (1) source for the supply.

IC 5-22-10-14. General Services Administration price. A purchasing agent may make a purchase from a person when the purchasing agent determines in writing that: (1) supplies can be purchased from the person or the person's authorized representative at prices equal to or less than the prices stipulated in current federal supply service schedules established by the federal General Services Administration; and (2) it is advantageous to the governmental body's interest in efficiency and economy.

IC 5-22-10-15. Purchase from person who has contract with federal agency.

(a) A purchasing agent may purchase supplies if the purchase is made from a person who has a contract with a federal agency and the person's contract with the federal agency requires the person to make the supplies available to the state or political subdivisions.

(b) A purchasing agent for a political subdivision may purchase supplies if the purchase is made from a person who has a contract with a state agency and the person's contract with the state

requires the person to make the supplies or services available to political subdivisions, as provided in IC 4-13-1.6 or IC 5-22-17-9.

IC 5-22-10-16. **Acquisition of supplies through transfer from federal government.**

(a) A purchasing agent may acquire supplies if the purchasing agent determines that the governmental body can obtain the transfer of the supplies from the federal government under IC 4-13-1.7 at a cost less than would be obtained from purchase of the supplies by soliciting for bids or proposals.

(b) A governmental body may not make a purchase under this section if title to the property will be transferred to the governmental body before a sufficient appropriation to pay the costs of the purchase is appropriated. However, if the supplies will be transferred to the governmental body upon conditional sale or under a lease, a lease with option to purchase, or a contract for the use of the supplies, the governmental body may make the purchase under this section if there are sufficient funds appropriated to pay the consideration required for one (1) year of the agreement.

(c) A purchasing agent who purchases or leases surplus federal materials shall, at the time of the purchase or lease, or immediately thereafter, give public notice in accordance with IC 5-3-1.

IC 5-22-10-17. Acquisition of supplies through acceptance of gift. A purchasing agent may acquire supplies by accepting a gift for the purchasing agent's governmental body.

IC 5-22-10-18. Special purchase of copyrighted material. A purchasing agent for a state purchasing agency may make a special purchase of copyrighted materials to be used, provided, or distributed by a state agency.

IC 5-22-10-19. Purchase from public utility following independent appraisal. A purchasing agent may make a special purchase from a public utility if the purchase or lease price is a negotiated price that considers the results of an independent appraisal that the purchasing agency obtains and an independent appraisal that the public utility obtains.

IC 5-22-10-20. Purchase of petroleum products by aviation commissioners or airport authority.

(a) This section applies to the purchase of petroleum products by: (1) a board of aviation commissioners under IC 8-22-2; or (2) an airport authority under IC 8-22-3.

(b) A purchasing agent may make a special purchase of petroleum products if the petroleum products are for resale to the general public.

Special Procurement Request

Date: [Date Requested]

To: Indiana Department of Administration
idoaspecprocreg@idoa.in.gov

From: [Agency Name]
[Agency Contact Person]
[Agency Contact Phone & Email]

Relevant Indiana Code (per 5-22-10): [copy IC number and description that applies]
Value of Proposed Contract or Purchase: enter amount here
Recommended Vendor: enter vendor name here

Detailed Justification that Validates Special Purchasing Method
Please identify any supplemental supporting documents.

Describe the product/services the vendor will provide (note if it is state or federally mandated), and explain why this meets the special purchasing method listed above.

PRODUCTS ONLY: Detail the research performed to determine this product is the best solution for the state.

Describe why this vendor was chosen and if the agency contacted other vendors.

Was there an initial government estimate?

Describe the negotiation proceedings that took place or how did the agency arrive at the price?

How did the agency document its discussions with the vendor?

Explain why the price is fair and reasonable under the circumstances.

PRODUCTS ONLY: Provide detailed information for not entering into a contract if the agency is requesting a one-time purchase.

Signed By:

Requesting Agency	Indiana Department of Administration Date:	State Budget Agency Date:

3. Draft Agreement

Professional Services Contract Development

Reminders

The following reminders are offered to help avoid having contracts returned unsigned during the review process. This is not an exhaustive listing but rather a listing of those items that occur frequently.

- The contractor's duties need to be described fully within the contract itself. All too frequently a contract is rejected (particularly amendments) because the agency has explained the duties on the EDS sheet, but has failed to include them in the contract or amendment.

- To assist in the timely review of your contract, it is important that you receive IDOA approval in advance and in writing for approval of special procurements, particularly if you are relying on a sole source under IC 5-22-10-13.

- If the Contractor/Grantee is not an individual, be sure to include the business entity designation that appears in the Secretary of State's listing ("Inc.", "Corp.", "LLC", "LP", etc.) both in the first paragraph of the contract, on the signature page, and on the EDS sheet.

- Indiana firms/universities/individuals must be sought to fill the contractual needs of state agencies. If you contract with someone other than an Indiana entity, you will need to explain how you determined that there was no Indiana entity that could fill your needs. Always attach a completed Indiana Economic Impact Statement.

- If you are deleting a boilerplate clause, leave the paragraph numbering the same, delete the text, and state "not applicable" or "deleted by agreement of the parties" (ex. **18. Employment Option** – DELETED BY MUTUAL AGREEMENT OF THE PARTIES).

- Non-Collusion is the final clause before the signature page for all agreements including renewals/amendments. The signature page of an agreement should be placed after the contract language and before attachments/exhibits. The signature page must be flagged for easy identification by the approving agencies.

- Attachments/exhibits attached to a contract **must** be incorporated by reference in the body of the contract and must be labeled. <u>Make sure information in exhibits, attachments, appendices, etc. is consistent with the contract.</u> No extraneous items should be attached to a contract.

- Mutual Termination for Convenience Clauses are generally unacceptable and will likely result in a rejection of your contract or grant.

- The use of Executive Letters to change a contract is unacceptable. All changes to a contract must be by mutual agreement and by amendment and signed by all parties, including IDOA, Budget and OAG.

- When changes/corrections are made in an agreement after signatures have been affixed, the changes must be initialed and dated by both the Contractor and the agency.

- Include all optional clauses that you believe will best protect your agency. Do not include clauses which are not appropriate/useful (i.e. using a Key Person clause if there is no key person to the agreement, using order of precedence when there are no other documents to the agreement, etc.).

- If using clauses that require the insertion of information to make them complete (RFP #___, payment shall be sent to _____) insert the needed information or remove the clause.

- In contracts with an individual, an issue arises as to whether that individual is a true independent contractor or an employee. So, it is a good idea to include a written analysis of the service in relation to the IRS guidelines. This should be placed behind the EDS. It will help move the contract along.

- Make sure all dates are consistent in a document. Fiscal year does not automatically set contract dates.

- The federal government frequently requires certain boilerplate in contracts where the receipt of federal funds is involved. The required boilerplate varies with the source of the funds. This manual does not attempt to address this type of boilerplate. If your contract will involve federal funds, check with your agency legal section or program management to make sure all necessary clauses are included.

- **Do not include instructional language (the text boxes)** when using templates.

- Number each page of the contract, preferably "X of Y".

- Use the correct form (i.e. contract, grant, MOU).

- **All signatures must be in original ink, no signature stamps or copies are accepted**.

- Make sure dates and amounts are consistent. The term of the contract should be consistent with the dates listed, and the amounts listed need to add up correctly.

Contract Checklist

Before you send your contract through the signature approval process, check your contract against the following list. If all items are completed, your contract should not encounter any problems during the approval process.

- ☐ Terms are spelled out, consistent, does not conflict with federal or state law, etc.
- ☐ All contract documents are paginated and in order.
- ☐ All references in contract correspond with appropriate clauses and attachments.
- ☐ **Attachments**
  - must be incorporated by reference (please put references in **bold** for ease of reviewing)
  - if referenced, must be attached FOLLOWING the signature page
  - if referenced, must reference proper attachment number
  - if attached, must be referenced
  - all attachments should be labeled in accordance with the references made in the contract
  - if dated, must be dated prior to contract signature dates
- ☐ **Confidentiality** - if contractor has referenced any additional confidentially requirements, they must be subject to IC 5-14-3
- ☐ **Consideration**
  - clear, detailed description of consideration
  - if itemized, items must equal total
- ☐ **Copies**
  - if more than one copy of the contract, must have original signature (no faxes or photocopies)
  - if more than one copy of the contract, must have attachments for each copy, if applicable
- ☐ **Duties** - clear, detailed description of duties
- ☐ **Handwritten changes** - must be initialed by both parties, and must be initialed by parties with the authority to sign contracts
- ☐ **Math** - does basic math in the contract add up (Ex. per square foot costs, itemized totals)
- ☐ **SSNs** - should be *no* visible personal social security numbers in contract, attachments, or EDS sheets
- ☐ Duties of Contractor, Rate of Pay and Terms of Contract - REQUIRED
- ☐ **Term**
  - if it lists a number of months and two dates, the number of months must equal the time between the two dates (Ex. 12 months, Jan 1 to Dec 31)
  - must include a termination date
- ☐ Telephone Privacy clause has been included and has not been modified.—REQUIRED
- ☐ Ethics—REQUIRED
- ☐ Drug-free workplace Certification –REQUIRED

- ☐ Employment Eligibility Verification - REQUIRED
- ☐ Funding Cancellation - REQUIRED
- ☐ Governing Laws – REQUIRED
- ☐ Indemnity (Hold Harmless Clause) - ***the State <u>can never</u> indemnify the contractor***
- ☐ Nondiscrimination Clause – REQUIRED
- ☐ Travel - (REQUIRED if travel costs included in contract)
- ☐ Boilerplate Affirmation Clause – REQUIRED
- ☐ Non-Collusion Statement – REQUIRED
- ☐ **Signature Page**
  - Contractor and AGENCY Signature (originals; NO faxes or photocopies!)
  - Remember to get IOT Signature if necessary otherwise designate N/A on the signature line.
  - Jessica Robertson, Commissioner, Indiana Department of Administration
  - Brian E. Bailey, Director, State Budget Agency
  - Gregory F. Zoeller, Attorney General of Indiana

PROFESSIONAL SERVICES CONTRACT

EDS # _____

This Contract ("this Contract"), entered into by and between _____ (the "State") and _____ (the "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Duties of Contractor.

The duties of the Contractor should outline the exact, detailed services to be performed. Detailing those services ensures that your agency and the Contractor understand exactly what should be provided and lessens the chances that misunderstandings will arise. If the duties of the Contractor have already been set out in a Statement of Work or other separate document, you may fulfill the requirements of this clause by making a short descriptive statement about the duties to be performed then reference that separate document as an exhibit. **ALL ATTACHMENTS / EXHIBITS MUST BE SPECIFICALLY INCORPORATED BY REFERENCE AND PROPERLY LABELED.**

The Contractor shall provide the following services relative to this Contract:

2. Consideration.

Consideration should be stated as a definite amount at a certain rate with a ceiling limitation (per hour, per deliverable, per day, etc.). IDOA requires a not-to-exceed figure on total payments when a rate system is used. As in Clause 1 above, attaching an exhibit may be advisable where the system of consideration involves a number of deliverables and is sufficiently complex to make it advisable to do so. You should still state the not-to-exceed amount in this clause. THIS SHOULD BE THE SECOND CLAUSE OF THE CONTRACT.

The Contractor will be paid at the rate of _____ for performing the duties set forth above. Total remuneration under this Contract shall not exceed $ _____.

3. Term.

Term should clearly state the duration of the Contract either by giving a specific beginning and ending date, (month, day and year) OR a duration that begins after the date of the last State signatory. There is no statutory term limit on service contracts. However, as a matter of policy, we retain a 4-year limit, but are willing to discuss longer terms on a case by case basis. THIS SHOULD BE THE THIRD CLAUSE OF THE CONTRACT.

This Contract shall be effective for a period of _____. It shall commence on _____ and shall remain in effect through _____.

THE FOLLOWING PARAGRAPHS 4 THROUGH 49 ARE DEFINED BY IDOA AS STATE BOILERPLATE CLAUSES. STATE BOILERPLATE CLAUSES SHALL REMAIN UNALTERED AND IN THEIR STANDARD FORM, UNLESS ANY CHANGES OR ALTERATIONS ARE DOCUMENTED AS REQUIRED UNDER PARAGRAPH 46, "BOILERPLATE AFFIRMATION CLAUSE".

4. Access to Records. The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

5. Assignment; Successors. The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

6. Assignment of Antitrust Claims.

We encourage the use of this clause. This clause ensures that the State may recover for antitrust claims that arise between the Contractor and its vendors or subcontractors. The clause places into the contract the same rights the state has under IC 24-1-1-5.1 and IC 24-1-1-5.2.

As part of the consideration for the award of this Contract, the Contractor assigns to the State all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.

7. Audits. The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC §5-11-1, *et seq.*, and audit guidelines specified by the State.

The following clause should be used as an alternative if Federal funds are used

The State considers the Contractor to be a "Contractor" under 2 C.F.R. 200.330 for purposes of this Contract. However, if it is determined that the Contractor is a "subrecipient" and if required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements), Contractor shall arrange for a financial and compliance audit, which complies with 2 C.F.R. 200.500 *et seq*.

8. Authority to Bind Contractor. The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the State.

9. Changes in Work.

This provision can be customized to meet your agency's contracting needs.

The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. The Contractor shall make no claim for additional compensation in the absence of

a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

10. Compliance with Laws.

A. The Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC §4-2-6, *et seq*., IC §4-2-7, *et seq*. and the regulations promulgated thereunder. **If the Contractor has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Contractor shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this contract.** If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at http://www.in.gov/ig/. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Contractor agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

Authority to withhold payments is found in IC 4-13-2-14.5 for contractors on the tax warrant list for delinquent taxes.

D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC §5-17-5.

F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and

environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

G. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

H. As required by IC §5-22-3-7:

(1) The Contractor and any principals of the Contractor certify that:

(A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of:

(i) IC §24-4.7 [Telephone Solicitation Of Consumers];

(ii) IC §24-5-12 [Telephone Solicitations]; or

(iii) IC §24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

(B) the Contractor will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

(2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor, except for de minimis and nonsystematic violations,

(A) has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

(B) will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

11. Condition of Payment. All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of and federal, state or local statute, ordinance, rule or regulation.

12. Confidentiality of State Information. The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract will not be disclosed to or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Contractor for the State under this Contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC §4-1-10 and IC §4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

13. Continuity of Services.

This clause is vital in certain types of contracts, particularly those involving the administration of essential programs. But often, inclusion of this clause is unnecessary and confusing to the contractor. Do not hesitate to delete it when its inclusion is inappropriate.

A. The Contractor recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either the State or another contractor, may continue them. The Contractor agrees to:

1. Furnish phase-in training; and
2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

B. The Contractor shall, upon the State's written notice:

1. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires; and
2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

14. Debarment and Suspension.

A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term “principal” for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State’s request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

15. Default by State. If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute measures to collect monies due up to and including the date of termination.

16. Disputes.

This is a very important clause. You should include it in every contract. This gives you and the Contractor an avenue to settle grievances, rather than to terminate the contract. No authority can replace that of the Commissioner of the Indiana Department of Administration. It is sometimes helpful to reinforce to the Contractor that this procedure is merely to assist the State in determining true conflicts from mere misunderstandings, and that the decision of the Commissioner is non-binding.

A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs.

C. If the parties are unable to resolve a contract dispute between them after good faith attempts to do so, a dissatisfied party shall submit the dispute to the Commissioner of the Indiana Department of Administration for resolution. The dissatisfied party shall give written notice to the Commissioner and the other party. The notice shall include (1) a description of the disputed issues, (2) the efforts made to resolve the dispute, and (3) a proposed resolution. The Commissioner shall promptly issue a Notice setting out documents and materials to be submitted to the Commissioner in order to resolve the dispute; the Notice may also afford the parties the opportunity to make presentations and enter into further negotiations. Within 30 business days of the conclusion of the final presentations, the Commissioner shall issue a written decision and furnish it to both parties. The Commissioner's decision shall be the final and conclusive administrative decision unless either party serves on the Commissioner and the other party, within ten business days after receipt of the Commissioner's decision, a written request for reconsideration and modification of the written decision. If the Commissioner does not modify the written decision within 30 business days, either party may take such other action helpful to resolving the dispute, including submitting the dispute to an Indiana court of competent jurisdiction. If the parties accept the Commissioner's decision, it may be memorialized as a written Amendment to this Contract if appropriate.

D. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for the Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

E. With the written approval of the Commissioner of the Indiana Department of Administration, the parties may agree to forego the process described in subdivision C. relating to submission of the dispute to the Commissioner.

F. This paragraph shall not be construed to abrogate provisions of Ind. Code 4-6-2-11 in situations where dispute resolution efforts lead to a compromise of claims in favor of the State as described in that

statute. In particular, releases or settlement agreements involving releases of legal claims or potential legal claims of the state should be processed consistent with Ind. Code 4-6-2-11, which requires approval of the Governor and Attorney General.

17. Drug-Free Workplace Certification.

This clause is required by Executive Order 90-5 and applies to all individuals and private legal entities who receive grants or contracts from State agencies. This clause was modified in 2005 to apply only to Contractor's employees within the State of Indiana. Do not modify, alter or change this clause. A copy of Executive Order 90-5 is available on the IDOA intranet.

As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of $25,000.00, the Contractor certifies and agrees that it will provide a drug-free workplace by:

A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;

E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

18. Employment Eligibility Verification.

This clause is required by IC 22-5-1.7-11, 12, 13 for all contracts for services.

As required by IC §22-5-1.7, the Contractor swears or affirms under the penalties of perjury that the Contractor does not knowingly employ an unauthorized alien. The Contractor further agrees that:

A. The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC §22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.

B. The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

C. The Contractor shall require his/her/its subcontractors, who perform work under this Contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

19. Employment Option. If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-competition agreements that may be in effect. This release will be at no cost to the State or the employee.

20. Force Majeure. In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

21. Funding Cancellation.

This clause is required by IC 5-22-17-5 and FMC 2007-1.

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

22. Governing Law.

This clause is MANDATORY in all contracts and is covered by IC 34-13-2-3(d). Many Contractors want to alter the clause to include the laws of the state in which their parent company resides. This is NEVER acceptable.

This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

23. HIPAA Compliance. If this Contract involves services, activities or products subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Contractor covenants that it will appropriately safeguard Protected Health Information (defined in 45 CFR 160.103), and agrees that it is subject to, and shall comply with, the provisions of 45 CFR 164 Subpart E regarding use and disclosure of Protected Health Information.

24. Indemnification.

This clause is also known as a Hold-Harmless Clause. **NEVER** include a clause that provides that the State will hold harmless or indemnify the other party.

The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all third party claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State shall not provide such indemnification to the Contractor.

25. Independent Contractor; Workers' Compensation Insurance.

This is a very important clause. Refer to the earlier section in the *Manual* that addresses abuses of this option per IRS rulings.

The Contractor is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The Contractor shall provide all necessary unemployment and workers' compensation insurance for the Contractor's employees, and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.

26. Information Technology Enterprise Architecture Requirements.

Unless there is a waiver approved by the Indiana Office of Technology (IOT), this clause should be used in all contracts having to do with procuring new Information Technology products and services to assure consideration for approval by IOT.

If the Contractor provides any information technology related products or services to the State, the Contractor shall comply with all IOT standards, policies and guidelines, which are online at http://iot.in.gov/architecture/. The Contractor specifically agrees that all hardware, software and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC §4-13.1-3. Any deviation from these architecture

requirements must be approved in writing by IOT in advance. The State may terminate this Contract for default if the Contractor fails to cure a breach of this provision within a reasonable time.

27. Insurance.

This clause is not mandatory. However, you may make a business decision that requires insurance provisions. If so, you should use the language provided here.

A. The Contractor and their subcontractors (if any) shall secure and keep in force during the term of this Contract the following insurance coverages (if applicable) covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than $700,000 per person and $5,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.

2. Automobile liability for owned, non-owned and hired autos with minimum liability limits of $700,000 per person and $5,000,000 per occurrence. The State is to be named as an additional insured on a primary, non-contributory basis.

3. Errors and Omissions liability with minimum liability limits of $1,000,000 per claim and in the aggregate. Coverage for the benefit of the State shall continue for a period of two (2) years after the date of service provided under this Contract.

4. Fiduciary Liability is required if the Contractor is responsible for the management and oversight of various employee benefit plans and programs such as pensions, profit-sharing and savings, among others. These contractors face potential claims for mismanagement brought by plan members. Limits should be no less than $700,000 per cause of action and $5,000,000 per occurrence.

5. Valuable Papers coverage, available under an Inland Marine policy, is required when any plans, drawings, media, data, records, reports, billings and other documents are produced or used under this agreement. Insurance must have limits sufficient to pay for the re-creation and reconstruction of such records.

6. The Contractor shall secure the appropriate Surety or Fidelity Bond(s) as required by the state department served or by applicable statute.

7. The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of workers' compensation coverage meeting all statutory requirements of IC §22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.

B. The Contractor's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority or other appropriate authorization to operate in the state in which the policy was issued.

2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.

3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.

4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.

5. The Contractor waives and agrees to require their insurer to waive their rights of subrogation against the State of Indiana.

C. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Contract.

28. Key Person(s).

This clause should only be included if your agency has identified persons key to the success of the contract. The Key Person should be identified in the Duties section of the contract OR may be included in this section.

A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, the State shall have the right to terminate this Contract upon thirty (30) days' prior written notice.

B. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Contractor shall not be permitted without express written consent of the State.

Nothing in sections A and B, above shall be construed to prevent the Contractor from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Contractor shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Key person(s) to this Contract is/are _____

29. Licensing Standards. The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license,

certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

30. Merger & Modification. This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.

31. Minority and Women's Business Enterprises Compliance. Award of this Contract was based, in part, on the MBE/WBE participation plan**.** The following certified MBE or WBE subcontractors will be participating in this Contract:

MBE/WBE	PHONE	COMPANY NAME	SCOPE OF PRODUCTS and/or SERVICES	UTILIZATION	DATE	PERCENT

A copy of each subcontractor agreement must be submitted to IDOA's MBE/WBE Division within thirty (30) days of the effective date of this Contract. Failure to provide a copy of any subcontractor agreement will be deemed a violation of the rules governing MBE/WBE procurement, and may result in sanctions allowable under 25 IAC 5-7-8. Failure to provide any subcontractor agreement may also be considered a material breach of this Contract. The Contractor must obtain approval from IDOA's MBE/WBE Division before changing the participation plan submitted in connection with this Contract.

The Contractor shall report payments made to MBE/WBE Division subcontractors under this Contract on a monthly basis. Monthly reports shall be made using the online audit tool, commonly referred to as "Pay Audit." MBE/WBE Division subcontractor payments shall also be reported to the Division as reasonably requested and in a format to be determined by Division.

32. Nondiscrimination.

You **MUST** include this clause. Please see the following section for contracts using federal funding.

Pursuant to the Indiana Civil Rights Law, specifically including IC §22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Contract, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.

If federal funding is involved with the contract, you must include the following stipulated language.

The State is a recipient of federal funds, and therefore, where applicable, Contractor and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant

to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

33. Notice to Parties. Whenever any notice, statement or other communication is required under this Contract, it shall be sent by first class mail or via an established courier / delivery service to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to: **(Include contact name and/or title, name of agency & address)**

_____
_____
_____
_____

B. Notices to the Contractor shall be sent to: **(Include contact name and/or title, name of vendor & address)**

_____
_____
_____
_____

As required by IC §4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.

34. Order of Precedence; Incorporation by Reference.

We strongly encourage the use of this clause. This clause can be extremely important when a problem arises. Word the clause accordingly, but state-created documents should ALWAYS take precedence over Contractor documents or other material. You can refer to an RFP, a Grant Application, replies to an RFP or Grant Application Request prepared by a Vendor/Grantee, etc. If you include this clause in your contract, PLEASE fill in the information appropriately.

Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) this Contract, (2) attachments prepared by the State, (3) RFP#_____, (4) Contractor's response to RFP#_____, and (5) attachments prepared by the Contractor. All attachments, and all documents referred to in this paragraph, are hereby incorporated fully by reference.

35. Ownership of Documents and Materials.

A. All documents, records, programs, applications, data, algorithms, film, tape, articles, memoranda, and other materials (the "Materials") not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor hereby transfers and assigns any ownership claims to the State so that all Materials will be the property of the State. If ownership interest in the Materials cannot be assigned to the State, the Contractor grants the State a non-exclusive, non-cancelable, perpetual, worldwide royalty-free license to use the Materials and to use, modify, copy and create derivative works of the Materials.

B. Use of the Materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to the Materials developed for or supplied by the State and used to develop or assist in the services provided while the Materials are in the possession of the Contractor.

Any loss or damage thereto shall be restored at the Contractor's expense. The Contractor shall provide the State full, immediate, and unrestricted access to the Materials and to Contractor's work product during the term of this Contract.

36. Payments.

This provision may be modified to stipulate the type of payment- monthly, progress, per hour etc. Further detail can be added, such as how invoices should be submitted (for example, in triplicate, etc.).

A. All payments shall be made 35 days in arrears in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC §4-13-2-20.

Use this paragraph if payment in advance is made for maintenance of equipment or software.

B. The State Budget Agency and the Contractor acknowledge that Contractor is being paid in advance for the maintenance of equipment and / or software. Pursuant to IC §4-13-2-20(b)(14), Contractor agrees that if it fails to perform the maintenance required under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

37. Penalties/Interest/Attorney's Fees. The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC §5-17-5, IC §34-54-8, IC §34-13-1 and IC § 34-52-2-3.

Notwithstanding the provisions contained in IC §5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

38. Progress Reports.

This provision may be modified to include specific dates or periods that reports are due. Please modify the language in such a way as to be appropriate for your agency.

The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

39. Public Record.

We strongly encourage the use of this clause. All state contracts are subject to the Access to Public Records Act (IC 5-14-3). Unless an APRA exception applies all state contracts are disclosable public records. Under Executive Order 05-07, state contracts are required to be posted on the IDOA website for easy access to the public. This clause clearly informs the Contractor of that fact.

The Contractor acknowledges that the State will not treat this Contract as containing confidential information, and will post this Contract on its website as required by Executive Order 05-07. Use by the public of the information contained in this Contract shall not be considered an act of the State.

40. Renewal Option.

If there is the potential that your agency will want to renew the Contract, this clause is **REQUIRED**. As a matter of policy we retain a four (4)-year limit on renewals, but are willing to discuss longer terms on a case-by-case basis. If a contract is going to allow for a price increase, the method of determining the increase must be defined in the original contract. **If you do not provide for a price increase in the original contract, you cannot increase the price upon renewal but must do a formal amendment instead.**

This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC §5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract.

41. Severability. The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

42. Substantial Performance. This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

43. Taxes. The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

44. Termination for Convenience.

While not mandatory, inclusion of this clause is highly recommended.

This Contract may be terminated, in whole or in part, by the State, which shall include and is not limited to the Indiana Department of Administration and the State Budget Agency whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that the Indiana Department of Administration shall be deemed to be a party to this agreement with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.

45. Termination for Default.

A. With the provision of thirty (30) days' notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:

1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
3. Make progress so as to endanger performance of this Contract; or
4. Perform any of the other provisions of this Contract.

B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

46. Travel. No expenses for travel will be reimbursed unless specifically permitted under the scope of services or consideration provisions. Expenditures made by the Contractor for travel will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines.

47. Indiana Veteran's Business Enterprise Compliance. Award of this Contract was based, in part, on the Indiana Veteran's Business Enterprise ("IVBE") participation plan. The following IVBE subcontractors will be participating in this Contract:

VBE	PHONE	COMPANY NAME	SCOPE OF PRODUCTS and/or SERVICES	UTILIZATION	DATE	PERCENT

A copy of each subcontractor agreement shall be submitted to IDOA within thirty (30) days of the request. Failure to provide any subcontractor agreement may also be considered a material breach of this Contract. The Contractor must obtain approval from IDOA before changing the IVBE participation plan submitted in connection with this Contract.

The Contractor shall report payments made to IVBE subcontractors under this Contract on a monthly basis. Monthly reports shall be made using the online audit tool, commonly referred to as "Pay Audit." IVBE subcontractor payments shall also be reported to IDOA as reasonably requested and in a format to be determined by IDOA.

48. Waiver of Rights. No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the

services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract.

49. Work Standards. The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

50. State Boilerplate Affirmation Clause. I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's Boilerplate contract clauses (as contained in the *2015* OAG/ IDOA *Professional Services Contract Manual*) in any way except for the following clauses which are named below: _____

Identify by paragraph and subject matter each paragraph of the State Boilerplate that is modified or deleted.

Non-Collusion and Acceptance

You **MUST** have this clause in your contract. It is required by IC 5-22-16-6**. THIS SHOULD BE THE FINAL CLAUSE BEFORE THE SIGNATURE PAGE**. All contracts, amendments, renewals, addendums, supplements, etc. must include this clause.

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor, or that the undersigned is the properly authorized representative, agent, member or officer of the Contractor. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Contractor attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**

In Witness Whereof, Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below agree to the terms thereof.

[Contractor]
By: _____

_____
Name and Title, Printed

Date: _____

[Indiana Agency]
By: _____

_____
Name and Title, Printed

Date: _____

Approved by:
Indiana Department of Administration

By: _____(for)
Jessica Robertson, Commissioner

Date:_____

Approved by:
State Budget Agency

By: _____ (for)
Brian E. Bailey, Director

Date: _____

APPROVED as to Form and Legality:
Office of the Attorney General

_____(for)
Gregory F. Zoeller, Attorney General

Date: _____

Approved by:
Indiana Office of Technology

By: _____ (for)
Paul Baltzell, Chief Information Officer

Date: _____

If your Contract does not involve technology please delete the signature block for IOT or designate N/A in signature line.

Amendment Development

Reminders

The amendment boilerplate is used to alter the terms and/or conditions of an original contract/grant. An amendment is also used when the identity of the Contractor/Grantee changes because of a corporate purchase, sale, or other re-structuring. If your agency wishes to modify the terms of the original contract/grant and renew the contract/grant for an additional term, both of these things can be done within an amendment. Please include an Executive Document Summary as the face sheet of your amendment.

1. Amendments MUST be numbered in proper consecutive order.

2. If you are amending the term, original start date does not change, only the ending date. Do not include any statement that purports to change the starting date of the contract/grant term.

3. The original contract/grant being modified, and any amendment(s) previously executed, MUST be attached to the amendment document. Please include a copy of the original EDS sheet for the contract/grant being modified as well as a copy of the EDS sheet(s) for any amendment(s).

4. Please provide justification for why the original contract/grant must be amended (i.e. why was the additional work being requested not in the original contract/grant? Is the work covered under the amendment in line with the work described in the original contract/grant?).

5. If you are amending the dollar amount of the original contract/grant, please explain the need for the increase/decrease and any deviation from the original rate of compensation. Without a material change in the type or, in some cases, quantity of work to be performed justifying it, a change in the rate of compensation will not be approved.

6. The amendment signature page must duplicate the signature page of the original contract/grant.

7. **Do not include instructional language (the text boxes)** when using templates.

Amendment Checklist

☐ **Additional funds**
- total must match underlying plus amendment
- if budget exhibit, must be updated to include additional funds

☐ **Boilerplate -** if missing from original, has new or updated boilerplate (ex. drug-free workplace, ethics, telephone privacy, payments, information technology architecture, employment eligibility verification)

☐ **Copies**
- if more than one copy of the contract, must have original signature (no faxes or photocopies)
- if more than one copy of the contract, must have attachments for each copy, if applicable

☐ **Math -** does basic math in the contract add up (Ex. per square foot costs, itemized totals, old plus new amounts)

☐ **Non-collusion** – should be last paragraph of amendment/renewal

☐ **Signature**
- *must* be signed prior to end of underlying contract term
- *must* be original (no faxes or photocopies)

☐ **SSNs -** should be *no* visible personal social security numbers in contract, attachments, EDS sheets, or underlying EDS sheets, contracts, or attachments

☐ **Underlying contracts -** all underlying contracts and attachments and amendments should be attached

AMENDMENT

EDS # _____

This is an Amendment to the Contract (the "Contract") entered into by and between the _____ (the "State") and _____ (the "Contractor") approved by the last State signatory on _____.

In consideration of the mutual undertakings and covenants hereinafter set forth, the parties agree as follows:

1. The Contract is hereby [renewed] [extended] for an additional period of _____. It shall terminate on _____.

2. The consideration during this [renewal] [extension] period is _____. Total remuneration under the Contract is not to exceed $ _____.

Below are recent statutorily required additions to the state boilerplate. If your underlying contract or a previous amendment has already added one or more of these clauses, you do **not** need to include them in this amendment.

3. The Contract is amended by adding the following:

This clause is required by IC 22-5-1.7-11, 12, 13 for all contracts for services.

A. Employment Eligibility Verification. As required by IC §22-5-1.7, the Contractor swears or affirms under the penalties of perjury that the Contractor does not knowingly employ an unauthorized alien. The Contractor further agrees that:

A. The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC §22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.

B. The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

C. The Contractor shall require his/her/its subcontractors, who perform work under this Contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

We encourage the use of this clause. This clause ensures that the State may recover for antitrust claims that arise between the Contractor and its vendors or subcontractors. The clause places into the contract the same rights the state has under IC 24-1-1-5.1 and IC 24-1-1-5.2.

B. Assignment of Antitrust Claims. The Contractor assigns to the State all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.

All matters set forth in the original Contract and not affected by this Amendment shall remain in full force and effect.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor/Grantee, or that the undersigned is the properly authorized representative, agent, member or officer of the Contractor/Grantee. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor/Grantee, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Amendment other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Amendment, the Contractor/Grantee attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**

In Witness Whereof, Contractor and the State have, through their duly authorized representatives, entered into this Amendment. The parties, having read and understood the foregoing terms of this Renewal, do by their respective signatures dated below agree to the terms thereof.

[Contractor]

By: _____

_____
Name and Title, Printed

Date: _____

[Indiana Agency]

By: _____

_____
Name and Title, Printed

Date: _____

Approved by:
Indiana Department of Administration

By: _____(for)
Jessica Robertson, Commissioner

Date:_____

Approved by:
State Budget Agency

By: _____ (for)
Brian E. Bailey, Director

Date: _____

APPROVED as to Form and Legality:
Office of the Attorney General

_____(for)
Gregory F. Zoeller, Attorney General

Date: _____

Approved by:
Indiana Office of Technology

By: _____ (for)
Paul Baltzell, Chief Information Officer

Date: _____

If your Amendment does not involve technology please delete the signature block for IOT or designate N/A in signature line.

Renewal Development

Reminders

Renewals should be used when your agency would like to continue the same terms and conditions of the original contract/grant for an additional term. **Renewals cannot contain any modifications to the contract/grant.**

1. An expired contract/grant cannot be renewed.

2. A contract/grant cannot be renewed if there was not a renewal clause in the original contract/grant nor may it be renewed for a term longer than the original term.

3. When you renew the contract/grant, you are bringing all the original terms and conditions forward for another term (i.e. one additional year and $10,000 more dollars).

4. Please include an Executive Document Summary (EDS) as the face sheet of your Renewal.

5. Renewals must be numbered.

6. A renewal may allow for an increase in payment only if an increase has been provided for in the original contract/grant.

7. The original contract/grant being renewed MUST be attached to the renewal document.

8. The renewal signature page does not require the approval of the Attorney General's Office or the Information Technology Oversight Commission/Indiana Office of Technology.

9. If you only need more time on the contract/grant to complete work in progress, you may want to consider an amendment to extend the term.

10. Two types of renewal language have been offered for your use. ONLY USE ONE.

11. We retain a four (4) year limit on renewals, but are willing to discuss longer terms on a case by case basis.

12. The Attorney General's signature is not required for renewals as long as **no additional terms** have been added to the contract/grant.

Note: If you are adding additional terms or clauses, your renewal must be processed as an amendment. Additional terms also include new required boilerplate clauses.

RENEWAL
(For Renewals that DO NOT allow for a price increase)

Pursuant to IC 5-22-17-4 and the terms of the contract/grant, _____ (the "State") exercises its option to renew its contract/grant with _____ (the "Contractor" / "Grantee") under the same terms and conditions of the original contract/grant dated _____. The entire contract/grant shall commence on _____ and shall terminate on _____.

The total amount of the renewal is the amount owed during the renewal period. The total remuneration of the contract/grant is the amount committed for the full life of the contract/grant.

Total amount of this renewal is $_____. Total remuneration of this contract/grant is not to exceed $_____.

Non-Collusion and Acceptance

You MUST have this clause in your renewal. THIS SHOULD BE THE FINAL CLAUSE BEFORE THE SIGNATURE PAGE. All contracts, grants, amendments, renewals, addendums, etc. must include this clause.

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor/Grantee, or that the undersigned is the properly authorized representative, agent, member or officer of the Contractor/Grantee. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor/Grantee, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Renewal other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Renewal, the Contractor/Grantee attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**

In Witness Whereof, Contractor and the State have, through their duly authorized representatives, entered into this Renewal. The parties, having read and understood the foregoing terms of this Renewal, do by their respective signatures dated below agree to the terms thereof.

[Contractor/Grantee]

By:_____
Printed Name:_____
Title:_____
Date:_____

[State Agency]

By:_____
Printed Name:_____
Title:_____
Date:_____

Department of Administration

_____
Jessica Robertson, Commissioner

Date:_____

State Budget Agency

_____
Brian E. Bailey, Director

Date:_____

RENEWAL
(For Renewals that DO allow for a price increase)

Pursuant to IC 5-22-17-4 and the terms of the contract/grant, _____ (the "State") exercises its option to renew its contract/grant with _____ (the "Contractor" / "Grantee") under the same terms and conditions of the original contract/grant dated _____. The entire contract/grant shall commence on _____ and shall terminate on _____.

The total amount of the renewal is the amount owed during the renewal period. The total remuneration of the contract/grant is the amount committed for the full life of the contract/grant.

In accordance with the original contract/grant, an increase of _____ shall be allowed during this renewal period.

Total amount of this renewal is $_____. Total remuneration of this contract/grant is not to exceed $_____.

Non-Collusion and Acceptance

You MUST have this clause in your contract/grant agreement. THIS SHOULD BE THE FINAL CLAUSE BEFORE THE SIGNATURE PAGE. All contracts, grants, amendments, renewals, addendums, etc. must include this clause.

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor, or that the undersigned is the properly authorized representative, agent, member or officer of the Contractor. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Contractor attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**

In Witness Whereof, Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below agree to the terms thereof.

[Contractor/Grantee]

By:_____
Printed Name:_____
Title:_____
Date:_____

[State Agency]

By:_____
Printed Name:_____
Title:_____
Date:_____

Department of Administration

_____
Jessica Robertson, Commissioner

Date:_____

State Budget Agency

_____
Brian E. Bailey, Director

Date:_____

Addendum Development

Reminders

- When a contractor insists on using his/her own standard contract agreement, you must prepare and attach an addendum. The addendum incorporates the State's standard contract provisions. DO NOT SIGN THE CONTRACTOR'S FORM.

- The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor/Grantee, or that the undersigned is the properly authorized representative, agent, member or officer of the Contractor/Grantee. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor/Grantee, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this amendment other than that which appears upon the face hereof.

- **In Witness Whereof**, Contractor/Grantee and the State have, through their duly authorized representatives, entered into this amendment. The parties, having read and understood the foregoing terms of this amendment, do by their respective signatures dated below agree to the terms thereof.

- CONTRACTOR'S FORM; all parties must sign the State's Addendum Signature Page.

- As with the Contract Boilerplate, certain clauses have been designated as **required** and must be included in every addendum. The balance of the clauses is presented for your use and you should include as many as necessary to meet your agency needs.

- Please include a completed Executive Document Summary (EDS) as the face sheet of your contract.

- Fill in all blanks, even if using N/A.

- **Do not include instructional language (the text boxes)** when using templates.

ADDENDUM
EDS #_____

This Addendum is entered into by and between _____ ("the State") and the entity designated as "Contractor" below.

The purpose of this Addendum is to modify, delete, or amend certain terms and conditions set forth in the attached Form Contract prepared by Contractor (the "Form Contract"). This Addendum and the Form Contract are incorporated into each other and, when read together, shall constitute one integrated document ("this Contract"). Any inconsistency, conflict, or ambiguity between this Addendum and the Form Contract shall be resolved by giving precedence and effect to this Addendum.

Contractor Name:

Contractor Address:

Title of Form Contract:

1. Form Contract/Duties of Contractor. The Contractor shall provide the Services or Products described in the Form Contract.

2. Term. This Contract begins on _____ and ends _____.

3. Consideration. Total consideration for term of this Contract is $ _____.

By mutual agreement of the parties, the following terms and conditions are deleted from the Form Contract:

A. Any provision requiring the State of Indiana to provide insurance
B. Any provision requiring the State of Indiana to provide indemnity
C. Any provision providing that the Contract be construed in accordance with laws other than those of the State of Indiana
D. Any provision providing that suit be brought in any state other than Indiana
E. Any provision providing for resolution of contract disputes
F. Any provision requiring the State of Indiana to pay any taxes
G. Any provision requiring the State of Indiana to pay penalties, liquidated damages, interest or attorney's fees
H. Any provision modifying the applicable Indiana statute of limitations
I. Any provision relating to the time within which a claim must be made.
J. Any provision requiring payment of consideration in advance unless authorized by an exception listed in IC §4-13-2-20
K. Any provision limiting disclosure of the contract in violation of the Access to Public Records Act, IC §5-14-3. This is a Public Contract and will be posted on the State's website pursuant to Executive Order 05-07
L. Any provision requiring payment in less than 35 days
M. Any provision providing for automatic renewal
N. Any provision giving the Form Contract precedence over this Addendum

4. Access to Records. The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

5. Assignment; Successors. The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

6. Assignment of Antitrust Claims.

We encourage the use of this clause. This clause ensures that the State may recover for antitrust claims that arise between the Contractor and its vendors or subcontractors. The clause places into the contract the same rights the state has under IC 24-1-1-5.1 and IC 24-1-1-5.2.

As part of the consideration for the award of this Contract, the Contractor assigns to the State all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.

7. Audits. The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC §5-11-1, *et seq.*, and audit guidelines specified by the State.

The following clause should be used as an alternative if Federal funds are used.

The State considers the Contractor to be a "Contractor" under 2 C.F.R. 200.330 for purposes of this Contract. However, if it is determined that the Contractor is a "subrecipient" and if required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements), Contractor shall arrange for a financial and compliance audit, which complies with 2 C.F.R. 200.500 *et seq*.

8. Authority to Bind Contractor. The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the State.

9. Changes in Work.

This provision can be customized to meet your agency's contracting needs.

The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. The Contractor shall make no claim for additional compensation in the absence of

a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

10. Compliance with Laws.

A. The Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC §4-2-6, *et seq*., IC §4-2-7, *et seq*. and the regulations promulgated thereunder. **If the Contractor has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Contractor shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this contract.** If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at http://www.in.gov/ig/. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Contractor agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

Authority to withhold payments is found in IC 4-13-2-14.5 for contractors on the tax warrant list for delinquent taxes.

D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC §5-17-5.

F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and

environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

G. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

H. As required by IC §5-22-3-7:

(1) The Contractor and any principals of the Contractor certify that:

(A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of:

(i) IC §24-4.7 [Telephone Solicitation Of Consumers];

(ii) IC §24-5-12 [Telephone Solicitations]; or

(iii) IC §24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

(B) the Contractor will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

(2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor, except for de minimis and nonsystematic violations,

(A) has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

(B) will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

11. Condition of Payment. All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of and federal, state or local statute, ordinance, rule or regulation.

12. Confidentiality of State Information. The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract will not be disclosed to or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Contractor for the State under this Contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC §4-1-10 and IC §4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

13. Continuity of Services.

This clause is vital in certain types of contracts, particularly those involving the administration of essential programs. But often, inclusion of this clause is unnecessary and confusing to the contractor. Do not hesitate to delete it when its inclusion is inappropriate.

A. The Contractor recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either the State or another contractor, may continue them. The Contractor agrees to:

3. Furnish phase-in training; and
4. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

B. The Contractor shall, upon the State's written notice:

3. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires; and
4. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

14. Debarment and Suspension.

A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term “principal” for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State’s request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

15. Default by State. If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute measures to collect monies due up to and including the date of termination.

16. Disputes.

This is a very important clause. You should include it in every contract. This gives you and the Contractor an avenue to settle grievances, rather than to terminate the contract. No authority can replace that of the Commissioner of the Indiana Department of Administration. It is sometimes helpful to reinforce to the Contractor that this procedure is merely to assist the State in determining true conflicts from mere misunderstandings, and that the decision of the Commissioner is non-binding.

A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs.

C. If the parties are unable to resolve a contract dispute between them after good faith attempts to do so, a dissatisfied party shall submit the dispute to the Commissioner of the Indiana Department of Administration for resolution. The dissatisfied party shall give written notice to the Commissioner and the other party. The notice shall include (1) a description of the disputed issues, (2) the efforts made to resolve the dispute, and (3) a proposed resolution. The Commissioner shall promptly issue a Notice setting out documents and materials to be submitted to the Commissioner in order to resolve the dispute; the Notice may also afford the parties the opportunity to make presentations and enter into further negotiations. Within 30 business days of the conclusion of the final presentations, the Commissioner shall issue a written decision and furnish it to both parties. The Commissioner's decision shall be the final and conclusive administrative decision unless either party serves on the Commissioner and the other party, within ten business days after receipt of the Commissioner's decision, a written request for reconsideration and modification of the written decision. If the Commissioner does not modify the written decision within 30 business days, either party may take such other action helpful to resolving the dispute, including submitting the dispute to an Indiana court of competent jurisdiction. If the parties accept the Commissioner's decision, it may be memorialized as a written Amendment to this Contract if appropriate.

D. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for the Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

E. With the written approval of the Commissioner of the Indiana Department of Administration, the parties may agree to forego the process described in subdivision C. relating to submission of the dispute to the Commissioner.

F. This paragraph shall not be construed to abrogate provisions of Ind. Code 4-6-2-11 in situations where dispute resolution efforts lead to a compromise of claims in favor of the State as described in that

statute. In particular, releases or settlement agreements involving releases of legal claims or potential legal claims of the state should be processed consistent with Ind. Code 4-6-2-11, which requires approval of the Governor and Attorney General.

17. Drug-Free Workplace Certification.

This clause is required by Executive Order 90-5 and applies to all individuals and private legal entities who receive grants or contracts from State agencies. This clause was modified in 2005 to apply only to Contractor's employees within the State of Indiana. Do not modify, alter or change this clause. A copy of Executive Order 90-5 is available on the IDOA intranet.

As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of $25,000.00, the Contractor certifies and agrees that it will provide a drug-free workplace by:

A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;

E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

18. Employment Eligibility Verification.

This clause is required by IC 22-5-1.7-11, 12, 13 for all contracts for services.

As required by IC §22-5-1.7, the Contractor swears or affirms under the penalties of perjury that the Contractor does not knowingly employ an unauthorized alien. The Contractor further agrees that:

A. The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC §22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.

B. The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

C. The Contractor shall require his/her/its subcontractors, who perform work under this Contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

19. Employment Option. If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-competition agreements that may be in effect. This release will be at no cost to the State or the employee.

20. Force Majeure. In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

21. Funding Cancellation.

This clause is required by IC 5-22-17-5 and FMC 2007-1.

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

22. Governing Law.

This clause is MANDATORY in all contracts and is covered by IC 34-13-2-3(d). Many Contractors want to alter the clause to include the laws of the state in which their parent company resides. This is never acceptable.

This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

23. HIPAA Compliance. If this Contract involves services, activities or products subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Contractor covenants that it will appropriately safeguard Protected Health Information (defined in 45 CFR 160.103), and agrees that it is subject to, and shall comply with, the provisions of 45 CFR 164 Subpart E regarding use and disclosure of Protected Health Information.

24. Indemnification.

This clause is also known as a Hold-Harmless Clause. **NEVER** include a clause that provides that the State will hold harmless or indemnify the other party.

The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all third party claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State shall not provide such indemnification to the Contractor.

25. Independent Contractor; Workers' Compensation Insurance.

This is a very important clause. Refer to the earlier section in the *Manual* that addresses abuses of this option per IRS rulings.

The Contractor is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The Contractor shall provide all necessary unemployment and workers' compensation insurance for the Contractor's employees, and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.

26. Information Technology Enterprise Architecture Requirements.

Unless there is a waiver approved by the Indiana Office of Technology (IOT), this clause should be used in all contracts having to do with procuring new Information Technology products and services to assure consideration for approval by IOT.

If the Contractor provides any information technology related products or services to the State, the Contractor shall comply with all IOT standards, policies and guidelines, which are online at http://iot.in.gov/architecture/. The Contractor specifically agrees that all hardware, software and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC §4-13.1-3. Any deviation from these architecture

requirements must be approved in writing by IOT in advance. The State may terminate this Contract for default if the Contractor fails to cure a breach of this provision within a reasonable time.

27. Insurance.

This clause is not mandatory. However, you may make a business decision that requires insurance provisions. If so, you should use the language provided here.

A. The Contractor and their subcontractors (if any) shall secure and keep in force during the term of this Contract the following insurance coverages (if applicable) covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than $700,000 per person and $5,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.

2. Automobile liability for owned, non-owned and hired autos with minimum liability limits of $700,000 per person and $5,000,000 per occurrence. The State is to be named as an additional insured on a primary, non-contributory basis.

3. Errors and Omissions liability with minimum liability limits of $1,000,000 per claim and in the aggregate. Coverage for the benefit of the State shall continue for a period of two (2) years after the date of service provided under this Contract.

4. Fiduciary Liability is required if the Contractor is responsible for the management and oversight of various employee benefit plans and programs such as pensions, profit-sharing and savings, among others. These contractors face potential claims for mismanagement brought by plan members. Limits should be no less than $700,000 per cause of action and $5,000,000 per occurrence.

5. Valuable Papers coverage, available under an Inland Marine policy, is required when any plans, drawings, media, data, records, reports, billings and other documents are produced or used under this agreement. Insurance must have limits sufficient to pay for the re-creation and reconstruction of such records.

6. The Contractor shall secure the appropriate Surety or Fidelity Bond(s) as required by the state department served or by applicable statute.

7. The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of workers' compensation coverage meeting all statutory requirements of IC §22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.

B. The Contractor's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority or other appropriate authorization to operate in the state in which the policy was issued.

2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.

3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.

4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.

5. The Contractor waives and agrees to require their insurer to waive their rights of subrogation against the State of Indiana.

C. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Contract.

28. Key Person(s).

This clause should only be included if your agency has identified persons key to the success of the contract. The Key Person should be identified in the Duties section of the contract OR may be included in this section.

A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, the State shall have the right to terminate this Contract upon thirty (30) days' prior written notice.

B. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Contractor shall not be permitted without express written consent of the State.

Nothing in sections A and B, above shall be construed to prevent the Contractor from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Contractor shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Key person(s) to this Contract is/are _____

29. Licensing Standards. The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an

applicable license, certification, or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

30. Merger & Modification. This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.

31. Minority and Women's Business Enterprises Compliance. Award of this Contract was based, in part, on the MBE/WBE participation plan**.** The following certified MBE or WBE subcontractors will be participating in this Contract:

MBE/WBE	PHONE	COMPANY NAME	SCOPE OF PRODUCTS and/or SERVICES	UTILIZATION	DATE	PERCENT

A copy of each subcontractor agreement must be submitted to IDOA's MBE/WBE Division within thirty (30) days of the effective date of this Contract. Failure to provide a copy of any subcontractor agreement will be deemed a violation of the rules governing MBE/WBE procurement, and may result in sanctions allowable under 25 IAC 5-7-8. Failure to provide any subcontractor agreement may also be considered a material breach of this Contract. The Contractor must obtain approval from IDOA's MBE/WBE Division before changing the participation plan submitted in connection with this Contract.

The Contractor shall report payments made to MBE/WBE Division subcontractors under this Contract on a monthly basis. Monthly reports shall be made using the online audit tool, commonly referred to as "Pay Audit." MBE/WBE Division subcontractor payments shall also be reported to the Division as reasonably requested and in a format to be determined by Division.

32. Nondiscrimination.

You **MUST** include this clause. Please see the following section for contracts using federal funding.

Pursuant to the Indiana Civil Rights Law, specifically including IC §22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Contract, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.

If federal funding is involved with the contract, you must include the following stipulated language.

The State is a recipient of federal funds, and therefore, where applicable, Contractor and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant

to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

33. Notice to Parties. Whenever any notice, statement or other communication is required under this Contract, it shall be sent by first class mail or via an established courier / delivery service to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to: **(Include contact name and/or title, name of agency & address)**

_____
_____
_____
_____

B. Notices to the Contractor shall be sent to: **(Include contact name and/or title, name of vendor & address)**

_____
_____
_____
_____

As required by IC §4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.

34. Order of Precedence; Incorporation by Reference.

We strongly encourage the use of this clause. This clause can be extremely important when a problem arises. Word the clause accordingly, but State-created documents should ALWAYS take precedence over Contractor documents or other material. You can refer to an RFP, a Grant Application, replies to an RFP or Grant Application Request prepared by a Vendor/Grantee, etc. If you include this clause in your contract, PLEASE fill in the information appropriately.

Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) this addendum, (2) the form contract, (3)attachments prepared by the State, (4) RFP#_____, (5) Contractor's response to RFP#_____, and (6) attachments prepared by the Contractor. All attachments, and all documents referred to in this paragraph, are hereby incorporated fully by reference.

35. Ownership of Documents and Materials.

A. All documents, records, programs, applications, data, algorithms, film, tape, articles, memoranda, and other materials (the "Materials") not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor hereby transfers and assigns any ownership claims to the State so that all Materials will be the property of the State. If ownership interest in the Materials cannot be assigned to the State, the Contractor grants the State a non-exclusive, non-cancelable, perpetual, worldwide royalty-free license to use the Materials and to use, modify, copy and create derivative works of the Materials.

B. Use of the Materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to the Materials developed for or supplied by the State and used to develop or assist in the services provided while the Materials are in the possession of the Contractor.

Any loss or damage thereto shall be restored at the Contractor's expense. The Contractor shall provide the State full, immediate, and unrestricted access to the Materials and to Contractor's work product during the term of this Contract.

36. Payments.

This provision may be modified to stipulate the type of payment- monthly, progress, per hour etc. Further detail can be added, such as how invoices should be submitted (for example, in triplicate, etc.).

A. All payments shall be made 35 days in arrears in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC §4-13-2-20.

Use this paragraph if payment in advance is made for maintenance of equipment or software.

B. The State Budget Agency and the Contractor acknowledge that Contractor is being paid in advance for the maintenance of equipment and / or software. Pursuant to IC §4-13-2-20(b)(14), Contractor agrees that if it fails to perform the maintenance required under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

37. Penalties/Interest/Attorney's Fees. The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC §5-17-5, IC §34-54-8, IC §34-13-1 and IC § 34-52-2-3.

Notwithstanding the provisions contained in IC §5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

38. Progress Reports.

This provision may be modified to include specific dates or periods that reports are due. Please modify the language in such a way as to be appropriate for your agency.

The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

39. Public Record.

We strongly encourage the use of this clause. All state contracts are subject to the Access to Public Records Act (IC 5-14-3). Unless an APRA exception applies all state contracts are disclosable public records. Under Executive Order 05-07, state contracts are required to be posted on the IDOA website for easy access to the public. This clause clearly informs the Contractor of this fact.

The Contractor acknowledges that the State will not treat this Contract as containing confidential information, and will post this Contract on its website as required by Executive Order 05-07. Use by the public of the information contained in this Contract shall not be considered an act of the State.

40. Renewal Option.

If there is the potential that your agency will want to renew the Contract, this clause is **REQUIRED**. As a matter of policy we retain a four (4)-year limit on renewals, but are willing to discuss longer terms on a case-by-case basis. If a contract is going to allow for a price increase, the method of determining the increase must be defined in the original contract. **If you do not provide for a price increase in the original contract, you cannot increase the price upon renewal but must do a formal amendment instead.**

This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC §5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract.

41. Severability. The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

42. Substantial Performance. This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

43. Taxes. The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

44. Termination for Convenience.

While not mandatory, inclusion of this clause is highly recommended.

This Contract may be terminated, in whole or in part, by the State, which shall include and is not limited to the Indiana Department of Administration and the State Budget Agency whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that the Indiana Department of Administration shall be deemed to be a party to this agreement with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.

45. Termination for Default.

A. With the provision of thirty (30) days' notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:

1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
3. Make progress so as to endanger performance of this Contract; or
4. Perform any of the other provisions of this Contract.

B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

46. Travel. No expenses for travel will be reimbursed unless specifically permitted under the scope of services or consideration provisions. Expenditures made by the Contractor for travel will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines.

47. Indiana Veteran's Business Enterprise Compliance. Award of this Contract was based, in part, on the Indiana Veteran's Business Enterprise ("IVBE") participation plan. The following IVBE subcontractors will be participating in this Contract:

VBE	PHONE	COMPANY NAME	SCOPE OF PRODUCTS and/or SERVICES	UTILIZATION	DATE	PERCENT

A copy of each subcontractor agreement shall be submitted to IDOA within thirty (30) days of the request. Failure to provide any subcontractor agreement may also be considered a material breach of this Contract. The Contractor must obtain approval from IDOA before changing the IVBE participation plan submitted in connection with this Contract.

The Contractor shall report payments made to IVBE subcontractors under this Contract on a monthly basis. Monthly reports shall be made using the online audit tool, commonly referred to as "Pay Audit." IVBE subcontractor payments shall also be reported to IDOA as reasonably requested and in a format to be determined by IDOA.

48. Waiver of Rights. No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the

services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract.

49. Work Standards. The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

50. State Boilerplate Affirmation Clause. I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's Boilerplate contract clauses (as contained in the *2015* OAG/ IDOA *Professional Services Contract Manual*) in any way except for the following clauses which are named below: _____

Identify by paragraph and subject matter each paragraph of the State Boilerplate that is modified or deleted.

Non-Collusion and Acceptance

You **MUST** have this clause in your contract. It is required by IC 5-22-16-6**. THIS SHOULD BE THE FINAL CLAUSE BEFORE THE SIGNATURE PAGE**. All contracts, amendments, renewals, addendums, supplements, etc. must include this clause.

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor, or that the undersigned is the properly authorized representative, agent, member or officer of the Contractor. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Contractor attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**

In Witness Whereof, Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below agree to the terms thereof.

[Contractor]
By: _____

_____
Name and Title, Printed

Date: _____

[Indiana Agency]
By: _____

_____
Name and Title, Printed

Date: _____

Approved by:
Indiana Department of Administration

By: _____(for)
Jessica Robertson, Commissioner

Date:_____

Approved by:
State Budget Agency

By: _____ (for)
Brian E. Bailey, Director

Date: _____

APPROVED as to Form and Legality:
Office of the Attorney General

_____(for)
Gregory F. Zoeller, Attorney General

Date: _____

Approved by:
Indiana Office of Technology

By: _____ (for)
Paul Baltzell, Chief Information Officer

Date: _____

If your Contract does not involve technology please delete the signature block for IOT or designate N/A in signature line.

Grant Development

A Grant is an award of money by the State to a person or entity (the "Grantee") so that the Grantee can pursue or fulfill a goal or objective of the Grantee. The State can (and does) place restrictions on how the funds can be used, and require reports, conformance to schedules, etc. A contract should not be characterized as a grant unless there has been some application process where the State selected a Grantee based on certain usage requirements. When the State is the recipient of a grant from another source and will in turn use those funds to obtain services for the State from an outside entity, this is not marked a grant. It is a contract for services and solicitation guidelines would apply.

Reminders

- The following pages include Grant Boilerplate language. Only GRANT-SPECIFIC information is included here. Clauses that are mandatory for grants are included in this section. If there were clauses in the Professional/Personal Service Contract Boilerplate that would further protect your agency, feel free to include them. In any clause "borrowed" from the contract Boilerplate, please be sure to alter language to read "Grantee" rather than "Contractor."

- **Do not include instructional language (the text boxes)** when using templates.

- Certain clauses have been designated as required and must be included in every Grant. This includes an order of precedence clause if you incorporate a grant application into the agreement or if a grant application is used to clarify the expectations of the Grantee.

- Please include a completed Executive Document Summary as the face sheet of your Grant.

- Please number each page of the contract, preferably "X of Y".

- If your agency prepares federal grants, be sure to include clauses required by your federal granting authority.

GRANT AGREEMENT

EDS # _____

This Grant Agreement (this "Grant Agreement"), entered into by and between _____ (the "State") and _____ (the "Grantee"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Purpose of this Grant Agreement; Grant Funds.

This clause is specifically for Grants. A grant differs from a contract in that a grant's funds are specifically appropriated for narrowly-defined purposes, and usually may only be awarded to defined 'qualified entities', are subject to ongoing administration by a specific state agency, and subject to repayment to the state if the terms of the Grant are not met by the Grantee. Remember that your Exhibit reference may be different than the one included here. THIS SHOULD BE THE FIRST CLAUSE OF THE GRANT.

The purpose of this Grant Agreement is to enable the State to award a grant of $_____ to the Grantee for eligible costs of the services or project (the "Project") described in **Exhibits A** and **B** of this Grant Agreement, which are incorporated fully by reference. The funds shall be used exclusively in accordance with the provisions contained in this Grant Agreement and in conformance with Indiana Code §_____ establishing the authority to make this Grant, as well as any rules adopted thereunder. The funds received by the Grantee pursuant to this Grant Agreement shall be used only to implement the Project or provide the services in conformance with this Grant Agreement and for no other purpose.

2. Representations and Warranties of the Grantee.

A. The Grantee expressly represents and warrants to the State that it is statutorily eligible to receive these Grant funds and that the information set forth in its grant application is true, complete and accurate. The Grantee expressly agrees to promptly repay all funds paid to it under this Grant Agreement should it be determined either that it was ineligible to receive the funds, or it made any material misrepresentation on its grant application.

B. The Grantee certifies by entering into this Grant Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Grant Agreement by any federal or state department or agency. The term "principal" for purposes of this Grant Agreement is defined as an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Grantee.

3. Implementation of and Reporting on the Project.

Should this Grant provide for the development of a special project, rather than routine services to the community, this clause should be included. This is specifically a clause for Grants. Remember that your Exhibit reference may be different than the one included here.

A. The Grantee shall implement and complete the Project in accordance with **Exhibit A** and with the plans and specifications contained in its Grant Application, which is on file with the State and is incorporated by reference. Modification of the Project shall require prior written approval of the State.

B. The Grantee shall submit to the State written progress reports until the completion of the Project. These reports shall be submitted on a [weekly/monthly/quarterly] basis and shall contain such detail of progress or performance on the Project as is requested by the State.

4. Term.

Term should clearly state the duration of the agreement either by giving a specific beginning and ending date, (month, day and year) or a duration that begins after the date of the last State signatory. As a matter of policy we will retain the 4-year limit, but are willing to discuss longer terms on a case-by-case basis.

This Grant Agreement commences on _____ and shall remain in effect through _____. Unless otherwise provided herein, it may be extended or renewed upon the written agreement of the parties and in conformance with IC §5-22-17-4, and as permitted by the state or federal law governing this Grant.

5. Grant Funding.

A. The State shall fund this grant in the amount of $_____. The approved Project Budget is set forth as **Exhibit B** of this Grant Agreement, attached hereto and incorporated herein. The Grantee shall not spend more than the amount for each line item in the Project Budget without the prior written consent of the State, nor shall the Project costs funded by this Grant Agreement and those funded by any local and/or private share be changed or modified without the prior written consent of the State.

B. The disbursement of grant funds to the Grantee shall not be made until all documentary materials required by this Grant Agreement have been received and approved by the State and this Grant Agreement has been fully approved by the State.

6. Payment of Claims.

This is specifically a clause for Grants. Remember that your Exhibit reference may be different than the one included here. Customize the statements to meet your agency's needs

A. Unless otherwise authorized by statute and agreed to in this Grant Agreement, all payments shall be made 35 days in arrears in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, by the direct deposit by electronic funds transfer to the financial institution designated by the Grantee in writing. If advance payment of a portion of the grant funds is permitted by statute, and the State agrees to provide such advance payment, it shall be made only upon submission of a proper claim setting out the intended purposes of those funds. After such funds have been expended, Grantee shall provide State with a reconciliation of those expenditures.

B. Requests for payment will be processed only upon presentation of a Claim Voucher in the form designated by the State. Such Claim Vouchers must be submitted with the budget expenditure report detailing disbursements of state, local and/or private funds by project budget line items.

C. The State may require evidence furnished by the Grantee that substantial progress has been made toward completion of the Project prior to making the first payment under this Grant. All payments are subject to the State's determination that the Grantee's performance to date conforms with the Project as approved, notwithstanding any other provision of this Grant Agreement.

D. Claims shall be submitted to the State within _____ calendar days following the end of the [month/quarter] in which work on or for the Project was performed. The State has the discretion, and reserves the right, to NOT pay any claims submitted later than _____ calendar days following the end of the month in which the services were provided. All final claims and reports must be submitted to the State within _____ calendar days after the expiration or termination of this agreement. Payment for claims submitted after that time may, at the discretion of the State, be denied. Claims may be submitted on a [monthly or semi-monthly basis] only. If Grant funds have been advanced and are unexpended at the time that the final claim is submitted, all such unexpended grant funds must be returned to the State.

E. Claims must be submitted with accompanying supportive documentation as designated by the State. Claims submitted without supportive documentation will be returned to the Grantee and not processed for payment. Failure to comply with the provisions of this Grant Agreement may result in the denial of a claim for payment.

7. Project Monitoring by the State.

This is specifically a clause for Grants. Remember that your Exhibit reference may be different than the one included here. Customize the statements to meet your agency's needs.

The State may conduct on-site or off-site monitoring reviews of the Project during the term of this Grant Agreement and for up to ninety (90) days after it expires or is otherwise terminated. The Grantee shall extend its full cooperation and give full access to the Project site and to relevant documentation to the State or its authorized designees for the purpose of determining, among other things:

A. whether Project activities are consistent with those set forth in **Exhibit A**, the grant application, and the terms and conditions of the Grant Agreement;

B. the actual expenditure of state, local and/or private funds expended to date on the Project is in conformity with the amounts for each Budget line item as set forth in **Exhibit B** and that unpaid costs have been properly accrued;

C. that Grantee is making timely progress with the Project, and that its project management, financial management and control systems, procurement systems and methods, and overall performance are in conformance with the requirements set forth in this Grant Agreement and are fully and accurately reflected in Project reports submitted to the State.

8. Audits and Maintenance of Records.

A. Grantee shall submit to an audit of funds paid through this Grant Agreement, and shall make all books, accounting records and other documents available at all reasonable times during the term of this

Grant Agreement and for a period of three (3) years after final payment for inspection by the State or its authorized designee. Copies shall be furnished to the State at no cost.

The following clause should be used as an alternative if Federal funds are passed through to a subrecipient.

B. The Grantee is a "subrecipient" of federal grant funds under 2 C.F.R. 200.330. If required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements), Grantee shall arrange for a financial and compliance audit that complies with 2 C.F.R. 200.500 *et seq*.

9. Compliance with Laws.

You **MUST** include this clause.

A. The Grantee shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Grant Agreement shall be reviewed by the State and the Grantee to determine whether the provisions of this Grant Agreement require formal modification.

B. The Grantee and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC §4-2-6, *et seq*., IC §4-2-7, *et seq*. and the regulations promulgated thereunder. **If the Grantee has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Grant, the Grantee shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this grant.** If the Grantee is not familiar with these ethical requirements, the Grantee should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at http://www.in.gov/ig/. If the Grantee or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Grant immediately upon notice to the Grantee. In addition, the Grantee may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. The Grantee certifies by entering into this Grant Agreement that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The Grantee agrees that any payments currently due to the State may be withheld from payments due to the Grantee. Additionally, payments may be withheld, delayed, or denied and/or this Grant suspended until the Grantee is current in its payments and has submitted proof of such payment to the State.

Authority to withhold payments is found in IC 4-13-2-14.5 for grantees on the tax warrant list for delinquent taxes.

D. The Grantee warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Grantee agrees that the State may suspend funding for the Project. If a valid dispute exists as to the Grantee's liability or guilt in any action initiated by the State or its agencies, and the State decides to suspend funding to the Grantee, the Grantee may submit, in writing, a request for review to the Indiana Department of Administration (IDOA). A determination by IDOA

shall be binding on the parties. Any disbursements that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest.

E. The Grantee warrants that the Grantee and any contractors performing work in connection with the Project shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Grant Agreement and grounds for immediate termination and denial of grant opportunities with the State.

F. The Grantee affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

G. As required by IC §5-22-3-7:

(1)The Grantee and any principals of the Grantee certify that:

(A) the Grantee, except for de minimis and nonsystematic violations, has not violated the terms of:

(i) IC §24-4.7 [Telephone Solicitation Of Consumers];

(ii) IC §24-5-12 [Telephone Solicitations]; or

(iii) IC §24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and

(B) the Grantee will not violate the terms of IC §24-4.7 for the duration of this Grant Agreement, even if IC §24-4.7 is preempted by federal law.

(2)The Grantee and any principals of the Grantee certify that an affiliate or principal of the Grantee and any agent acting on behalf of the Grantee or on behalf of an affiliate or principal of the Grantee, except for de minimis and nonsystematic violations,

(A) has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

(B) will not violate the terms of IC §24-4.7 for the duration of this Grant Agreement even if IC §24-4.7 is preempted by federal law.

10. Drug-Free Workplace Certification.

This clause is required by Executive Order 90-5 and applies to all individuals and private legal entities who receive grants or contracts from State agencies. This clause was modified in 2005 to apply only to Grantee's employees within the State of Indiana and cannot be further modified, altered or changed. As required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana, the Grantee hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Grantee will give written notice to the State within ten (10) days after receiving actual notice that the Grantee, or an employee of the Grantee in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of grant payments, termination of the Grant and/or debarment of grant opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total amount set forth in this Grant Agreement is in excess of $25,000.00, the Grantee certifies and agrees that it will provide a drug-free workplace by:

A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and

B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Grantee's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace; and

C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the Grantee of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; and

D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction; and

E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

11. Employment Eligibility Verification.

For grants of over $1,000, you must either include this clause or have the Grantee sign a sworn affidavit that affirms that it has enrolled in the E-Verify program. *See* IC 22-5-1.7-11(6). If you choose to use the affidavit instead of this clause, you must attach the affidavit to the Grant Agreement.

As required by IC §22-5-1.7, the Grantee hereby swears or affirms under the penalties of perjury that:

A. The Grantee has enrolled and is participating in the E-Verify program;

B. The Grantee has provided documentation to the State that it has enrolled and is participating in the E-Verify program;

C. The Grantee does not knowingly employ an unauthorized alien.

D. The Grantee shall require its contractors who perform work under this Grant Agreement to certify to Grantee that the contractor does not knowingly employ or contract with an unauthorized alien and that the contractor has enrolled and is participating in the E-Verify program. The Grantee shall maintain this certification throughout the duration of the term of a contract with a contractor.

The State may terminate for default if the Grantee fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

12. Funding Cancellation.

You **MUST** include this clause. Even in instances where no dollars are being expended, this is important.

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Grant Agreement, it shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

13. Governing Law. This Grant Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

14. Information Technology Accessibility Standards. Any information technology related products or services purchased, used or maintained through this Grant must be compatible with the principles and goals contained in the Electronic and Information Technology Accessibility Standards adopted by the Architectural and Transportation Barriers Compliance Board under Section 508 of the federal Rehabilitation Act of 1973 (29 U.S.C. §794d), as amended. The federal Electronic and Information Technology Accessibility Standards can be found at: http://www.access-board.gov/508.htm.

15. Nondiscrimination.

You **MUST** include this clause. Please see the following section for Grants using federal funding.

Pursuant to the Indiana Civil Rights Law, specifically including IC §22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Grantee covenants that it shall not discriminate against any employee or applicant for employment relating to this Grant with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Grantee certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

If federal funding is involved with the grant, you **MUST** include the following stipulated language.

The Grantee understands that the State is a recipient of federal funds, and therefore, where applicable, Grantee and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

16. Notice to Parties. Whenever any notice, statement or other communication is required under this Grant, it shall be sent by first class mail or via an established courier / delivery service to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to: (Include contact name and/or title, name of agency & address)
_____
_____
_____
_____

B. Notices to the Grantee shall be sent to: (Include contact name and/or title, name of grantee& address)
_____
_____
_____
_____

C. As required by IC §4-13-2-14.8, payments to the Grantee shall be made via electronic funds transfer in accordance with instructions filed by the Grantee with the Indiana Auditor of State.

17. Order of Precedence.

This clause must be included if you make reference to a grant application to clarify the duties/expectations of the Grantee. This clause can be extremely important when a problem arises. Word the clause accordingly. If you include this clause in your Grant, PLEASE fill in the information appropriately.

Any inconsistency or ambiguity in this Grant Agreement shall be resolved by giving precedence in the following order: (1) requirements imposed by applicable federal law or other controlling document described in paragraph 20, below; (2) this Grant Agreement, (3) exhibits prepared by the State, (4)Invitation to Apply for Grant, (5) the Grant Application, and (6) exhibits prepared by Grantee.

18. Termination for Breach.

A. Failure to complete the Project and expend State, local and/or private funds in accordance with this Grant Agreement may be considered a material breach, and shall entitle the State to suspend grant payments, and suspend the Grantee's participation in State grant programs until such time as all material breaches are cured to the State's satisfaction.

B. The expenditure of State or federal funds other than in conformance with the Project or the Budget may be deemed a breach. The Grantee explicitly covenants that it shall promptly repay to the State all funds not spent in conformance with this Grant Agreement.

19. Termination for Convenience. Unless prohibited by a statute or regulation relating to the award of the grant, this Grant Agreement may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination shall be effected by delivery to the Grantee of a Termination Notice, specifying the extent to which such termination becomes effective. The Grantee shall be compensated for completion of the Project properly done prior to the effective date of termination. The State will not be liable for work on the Project performed after the effective date of termination. In no case shall total payment made to the Grantee exceed the original grant.

20. Federal and State Third-Party Contract Provisions. If part of this Grant involves the payment of federal funds, the Grantee and, if applicable, its contractors shall comply with the federal grant / contract provisions attached as **Exhibit(s)** _____ and incorporated fully herein.

21. State Boilerplate Affirmation Clause. I swear or affirm under the penalties of perjury that I have not altered, modified or changed the State's Boilerplate clauses (as defined in the *2015* OAG/IDOA *Professional Services Contract Manual*) in any way except for the following clauses which are named below:

Identify by paragraph and subject matter each paragraph of the State Boilerplate that is modified or deleted.

Non-Collusion, Acceptance

You **MUST** have this clause in your grant agreement. It is required by IC 5-22-16-6**. THIS SHOULD BE THE FINAL CLAUSE BEFORE THE SIGNATURE PAGE**. All contracts, amendments, renewals, addendums, supplements, etc. must include this clause.

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Grantee, or that the undersigned is the properly authorized representative, agent, member or officer of the Grantee. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Grantee, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Grant other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Grant, the Grantee attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**

In Witness Whereof, Grantee and the State have, through their duly authorized representatives, entered into this Grant. The parties, having read and understood the foregoing terms of this Grant, do by their respective signatures dated below agree to the terms thereof.

[Grantee]

By: _____

_____
Name and Title, Printed
Date: _____

[Indiana Agency]

By: _____

_____
Name and Title, Printed
Date: _____

Approved by:
Indiana Department of Administration

By: _____(for)
Jessica Robertson, Commissioner

Date:_____

Approved by:
State Budget Agency

By: _____ (for)
Brian E. Bailey, Director

Date: _____

APPROVED as to Form and Legality:
Office of the Attorney General

_____(for)
Gregory F. Zoeller, Attorney General

Date: _____

Approved by:
Indiana Office of Technology

By: _____ (for)
Paul Baltzell, Chief Information Officer

Date: _____

If your Grant does not involve technology please delete the signature block for IOT or designate N/A in signature line.

This affidavit may be used **in lieu** of the "Employee Eligibility Verification" clause in grant agreements. If this affidavit is used, it must be attached to the Grant Agreement.

GRANTEE AFFIDAVIT

Employee Eligibility Verification
For a Grant from a State Agency of More than $1000

The undersigned attests and states, under the penalties of perjury, the following:

1. That he/she/it is the Grantee or the properly authorized representative, agent, member, or officer of the Grantee;
2. That the Grantee is enrolled and participating in the E-Verify program as defined by IC 22-5-1.7-3;
3. That the Grantee will provide to the State documentation that the Grantee has enrolled and is participating in the E-Verify program; and
4. That the Grantee does not knowingly employ an unauthorized alien.
5. That the Grantee understands that the Grantee is not required to participate in the E-Verify program if the Grantee is self-employed and does not employ any employees.

Grantee Name: _____
Signature:_____
Printed Name:_____
Title:_____
Date:_____

Development of Contract between the State and State Institutions of Higher Education

This template is to be used when a state agency is contracting with a state institution of higher education.

According to IC §21-7-13-32 (b), "State Institutions of Higher Education" include only the following:

1. Ball State University
2. Indiana State University
3. Indiana University
4. Ivy Tech Community College
5. Purdue University
6. University of Southern Indiana
7. Vincennes University

CONTRACT BETWEEN THE STATE AND STATE INSTITUTIONS OF HIGHER EDUCATION

EDS # _____

This Contract (the "Contract"), entered into by and between _____ (the "State") and _____ (the "State Educational Institution," an institution referred to in IC §21-7-13-32(b)), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

These Standard Terms and Conditions for Contract and any amendments hereto shall apply to all contracts for professional services made and entered into between the State of Indiana and any of Indiana's Institutions of Higher Education that have approved of these standard terms as indicated by the signatures below. Each such contract for professional services shall identify the particular departments or units of both the State and the particular university that are the parties to the contract and shall, where appropriate, identify expressly any of the provisions below that do not pertain to that particular contract for professional services

1. Duties of the State Educational Institution. The duties of the State Educational Institution are set forth on **Exhibit A**, attached hereto and incorporated fully herein.

2. Consideration. The State Educational Institution will be paid $_____ for performing the duties set forth above. Total remuneration under this Contract shall not exceed $_____.

3. Term. This Contract shall be effective for a period of _____. It shall commence on _____ and shall remain in effect through _____.

4. "Separateness" of Contracts between the Parties. The State acknowledges and agrees that because of the unique nature of State Educational Institutions, the duties and responsibilities of "the State Educational Institution" in these Standard Conditions for Contracts between the State of Indiana and State Institutions and in any contract for professional services are specific to the department or unit of the State Educational Institution. The existence or status of any one contract between the State and the State Educational Institution shall have no impact on the execution or performance of any other contract and shall not form the basis for termination of any other contract by either party.

5. Access to Records. The State Educational Institution and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract term, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

6. Assignment; Successors. The State Educational Institution binds its successors and assignees to all the terms and conditions of this Contract. The State Educational Institution shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. The State Educational Institution may assign its right to receive payments to such third parties as the State Educational Institution may desire without the prior written consent of the State, provided that the State Educational Institution gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

7. Audits. The State Educational Institution acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, et. seq. and audit guidelines specified by the State and all applicable provisions of 2 C.F.R. 200.

8. Authority to Bind the State Educational Institution. The signatory for the State Educational Institution represents that he/she has been duly authorized to execute this Contract on behalf of the State Educational Institution and has obtained all necessary or applicable approvals to make this Contract fully binding upon the State Educational Institution when his/her signature is affixed, and certifies that this Contract is not subject to further acceptance by the State Educational Institution when accepted by the State.

9. Compliance with Laws

A. The State Educational Institution shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the State Educational Institution to determine whether the provisions of this Contract require formal modification.

B. The State Educational Institution and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC §4-2-6, *et seq*., IC §4-2-7, *et seq*. and the regulations promulgated thereunder. **If the State Educational Institution has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the State Educational Institution shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this contract.** If the State Educational Institution is not familiar with these ethical requirements, the State Educational Institution should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at http://www.in.gov/ig/. If the State Educational Institution or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the State Educational Institution. In addition, the State Educational Institution may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. The State Educational Institution certifies by entering into this Contract, that it is not presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The State Educational Institution agrees that further work may be withheld, delayed, or denied and/or this Contract suspended until the State Educational Institution is current in its payments and has submitted proof of such payment to the State.

D. The State Educational Institution warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State.

E. If a valid dispute exists as to the State Educational Institution's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the State Educational Institution, the State Educational Institution may request that it be allowed to continue, or receive work, without delay. The State Educational Institution must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties.

F. The State Educational Institution warrants that the State Educational Institution and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all

health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

G. The State Educational Institution agrees that the State may confirm, at any time, that no liabilities exist to the State, and, if such liabilities are discovered, that the State may bar the State Educational Institution from contracting with the State in the future and cancel existing contracts.

H. As required by IC 5-22-3-7:

(1)The State Educational Institution and its principals certify that:

(A) the State Educational Institution, except for de minimis and nonsystematic violations, has not violated the terms of:

(i) IC 24-4.7 [Telephone Solicitation Of Consumers];

(ii) IC 24-5-12 [Telephone Solicitations]; or

(iii) IC 24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and

(B) the State Educational Institution will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

(2) The State Educational Institution and any principals of the State Educational Institution certify that an affiliate or principal of the State Educational Institution and any agent acting on behalf of the State Educational Institution or on behalf of an affiliate or principal of the State Educational Institution, except for de minimis and nonsystematic violations,

(A)has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and

(B)will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

10. Confidentiality of Data, Property Rights in Products, Copyright Prohibition and Ownership of Documents and Materials.

A. Publication and dissemination of the project results are of fundamental importance to both the State and the State Educational Institution. The State Educational Institution is free to publish in academic journals, present at symposia, or use any results arising out of the performance of this Contract for its own internal instructional and research, or publication (*i.e.* graduate theses and dissertations) objectives. Any publications or presentations referencing the State shall be made in accordance with this Article.

B. The parties agree that all information, data, findings, recommendations, proposals, by whatever name described and in whatever form secured, developed, written or produced by the State Educational Institution in furtherance of this Contract shall be available to the State for its use and distribution at its discretion without additional charge to State. The State Educational Institution shall take such action as is necessary under law to preserve such rights in and of the State while such property is within the control and/or custody of the State Educational Institution. Full, immediate, and unrestricted access to the work product of the State Educational Institution during the term of this Contract shall be available to the State.

C. Use of these materials, other than related to Contract performance by the State Educational Institution, that includes any reference to the State, without the prior written consent of the State, is prohibited. For any purposes outside those contemplated by this Contract, and for which the State's participation will be

referenced, the State shall have the right of review and approval of the use, disclosure, and the finished product prior to its publication. All such requests shall be made in writing and delivered to the Agency Head or his/her designee. The State shall have sixty (60) days to review such requests and will respond in writing to the State Educational Institution. If the State has not responded within sixty (60) days, the request will be deemed approved.

D. The State Educational Institution and the State agree that the distribution of proceeds from any commercial licenses for patentable or copyrightable material developed as a result of this Contract, other than publications and presentations outlined in the preceding paragraph, shall be negotiated by the parties and shall be representative of the input of each party.

11. Confidentiality of State Information. The State Educational Institution understands and agrees that data, materials, and information disclosed to the State Educational Institution may contain confidential and protected information. Therefore, except to the extent required by the Indiana Access to Public Records Act, IC 5-14-3, the State Educational Institution covenants that data, material and information gathered, based upon or disclosed to the State Educational Institution for the purpose of this Contract, and specifically identified as confidential information by the State, will not be disclosed to or discussed with third parties without the prior written consent of the State.

12. Debarment and Suspension.

A. The State Educational Institution certifies by entering into this Contract that it is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the State Educational Institution.

B. The State Educational Institution certifies that it has verified the suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupments or penalties that might arise from non-compliance. The State Educational Institution shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

13. Default by State. If the State, sixty (60) days after receipt of written notice, fails to correct or cure any breach of this Contract, the State Educational Institution may cancel and terminate this Contract and institute the appropriate measures to collect monies due up to and including the date of termination.

14. Disputes

A. Should any disputes arise with respect to this Contract, the State Educational Institution and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The State Educational Institution agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the State Educational Institution fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the State Educational Institution as a result of such failure to proceed shall be borne by the State Educational Institution, and the State Educational Institution shall make no claim against the State for such costs.

C. If the parties are unable to resolve a contract dispute between them after good faith attempts to do so, a dissatisfied party shall submit the dispute to the Commissioner of the Indiana Department of Administration for resolution. The dissatisfied party shall give written notice to the Commissioner and the other party. The notice shall include (1) a description of the disputed issues, (2) the efforts made to resolve the dispute, and (3) a proposed resolution. The Commissioner shall promptly issue a Notice setting out documents and materials to be submitted to the Commissioner in order to resolve the dispute; the Notice may also afford the parties the opportunity to make presentations and enter into further negotiations. Within 30 business days of the conclusion of the final presentations, the Commissioner shall issue a written decision and furnish it to both parties. The Commissioner's decision shall be the final and conclusive administrative decision unless either party serves on the Commissioner and the other party, within ten business days after receipt of the Commissioner's decision, a written request for reconsideration and modification of the written decision. If the Commissioner does not modify the written decision within 30 business days, either party may take such other action helpful to resolving the dispute, including submitting the dispute to an Indiana court of competent jurisdiction. If the parties accept the Commissioner's decision, it may be memorialized as a written Amendment to this Contract if appropriate.

D. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for the Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

E. With the written approval of the Commissioner of the Indiana Department of Administration, the parties may agree to forego the process described in subdivision C. relating to submission of the dispute to the Commissioner.

F. This paragraph shall not be construed to abrogate provisions of Ind. Code 4-6-2-11 in situations where dispute resolution efforts lead to a compromise of claims in favor of the State as described in that statute. In particular, releases or settlement agreements involving releases of legal claims or potential legal claims of the state should be processed consistent with Ind. Code 4-6-2-11, which requires approval of the Governor and Attorney General.

15. Force Majeure. In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

16. Funding Cancellation. When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

17. Governing Law. This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

18. HIPAA Compliance. If this Contract involves services, activities or products subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the State Educational Institution covenants that it will appropriately safeguard Protected Health Information (defined in 45 CFR 160.103), and agrees that it is subject to, and shall comply with, the provisions of 45 CFR 164 Subpart E regarding use and disclosure of Protected Health Information.

19. FERPA Compliance. If the State Educational Institution is an "educational agency or institution" as that term is defined by the Family Educational Rights and Privacy Act (FERPA), 20 USC 1232g, 34 CFR 99.1, and this Contract involves "personally identifiable information," as defined at 34 CFR 99.3, the State Educational Institution covenants that it will appropriately safeguard from unauthorized disclosure to third parties any "personally identifiable information" with respect to a student.

20. Independent Contractor; Workers' Compensation Insurance. The State Educational Institution is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The State Educational Institution shall provide all necessary unemployment and workers' compensation insurance for the State Educational Institution's employees, and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.

21. Information Technology Accessibility. The State Educational Institution specifically agrees that all hardware, software, and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 749d) and IC 4-13.1-3. Any deviation from these architecture requirements must be approved in writing by the Indiana Office of Technology (IOT) in advance. The State may terminate this contract for default if State Educational Institution fails to cure a breach of this provision within a reasonable time.

22. Minority and Women's Business Enterprises Compliance. Award of this Contract was based, in part, on the MBE/WBE participation plan**.** The following certified MBE or WBE subcontractors will be participating in this Contract:

MBE/WBE	PHONE	COMPANY NAME	SCOPE OF PRODUCTS and/or SERVICES	UTILIZATION	DATE	PERCENT

A copy of each subcontractor agreement must be submitted to IDOA's MBE/WBE Division within thirty (30) days of the effective date of this Contract. Failure to provide a copy of any subcontractor agreement will be deemed a violation of the rules governing MBE/WBE procurement, and may result in sanctions allowable under 25 IAC 5-7-8. Failure to provide any subcontractor agreement may also be considered a material breach of this Contract. The Contractor must obtain approval from IDOA's MBE/WBE Division before changing the participation plan submitted in connection with this Contract.

The Contractor shall report payments made to MBE/WBE Division subcontractors under this Contract on a monthly basis. Monthly reports shall be made using the online audit tool, commonly referred to as "Pay Audit." MBE/WBE Division subcontractor payments shall also be reported to the Division as reasonably requested and in a format to be determined by Division.

23. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the State Educational Institution covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, State Educational Institution certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Contract, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the State Educational Institution or any subcontractor.

The State Educational Institution understands that the State is a recipient of federal funds, and therefore, where applicable, State Educational Institution and any subcontractors agree to comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672, which are incorporated herein by specific reference.

24. Severability. The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

25. Taxes. The State is exempt from state, federal and local taxes. The State will not be responsible for any taxes levied on the State Educational Institution as a result of this Contract.

26. Indiana Veteran's Business Enterprise Compliance. Award of this Contract was based, in part, on the Indiana Veteran's Business Enterprise ("IVBE") participation plan. The following IVBE subcontractors will be participating in this Contract:

VBE	PHONE	COMPANY NAME	SCOPE OF PRODUCTS and/or SERVICES	UTILIZATION	DATE	PERCENT

A copy of each subcontractor agreement shall be submitted to IDOA within thirty (30) days of the request. Failure to provide any subcontractor agreement may also be considered a material breach of this Contract. The Contractor must obtain approval from IDOA before changing the IVBE participation plan submitted in connection with this Contract.

The Contractor shall report payments made to IVBE subcontractors under this Contract on a monthly basis. Monthly reports shall be made using the online audit tool, commonly referred to as "Pay Audit." IVBE subcontractor payments shall also be reported to IDOA as reasonably requested and in a format to be determined by IDOA.

27. Waiver of Rights. No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right

28. Work Standards. The State Educational Institution shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State

becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals.

29. State Boilerplate Affirmation Clause. The State Educational Institution affirms that it has not altered, modified or changed the State's Boilerplate contract clauses (as defined in the *2015* OAG/ IDOA *Professional Services Contract Manual – State Educational Institution*) in any way except for the following clauses which are named below:

Identify by paragraph and subject matter each paragraph of the State Boilerplate that is modified or deleted.

Non-Collusion and Acceptance

You **MUST** have this clause in your contract. It is required by IC 5-22-16-6**. THIS SHOULD BE THE FINAL CLAUSE BEFORE THE SIGNATURE PAGE**. All contracts, amendments, renewals, addendums, supplements, etc. must include this clause.

The undersigned attests, subject to the penalties for perjury, that the undersigned is the State Educational Institution, or that the undersigned is the properly authorized representative, agent, member or officer of the State Educational Institution. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the State Educational Institution, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the State Educational Institution attests to compliance with the disclosure requirements in IC 4-2-6-10.5**

In Witness Whereof, Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below agree to the terms thereof.

[State Educational Institution]
By: _____

_____
Name and Title, Printed
Date: _____

[Indiana Agency]
By: _____

_____
Name and Title, Printed
Date: _____

Approved by:
Indiana Department of Administration

By: _____(for)
Jessica Robertson, Commissioner

Date:_____

Approved by:
State Budget Agency

By: _____ (for)
Brian E. Bailey, Director

Date: _____

APPROVED as to Form and Legality:
Office of the Attorney General

_____(for)
Gregory F. Zoeller, Attorney General

Date: _____

Approved by:
Indiana Office of Technology

By: _____ (for)
Paul Baltzell, Chief Information Officer

Date: _____

If your Contract does not involve technology please delete the signature block for IOT or designate N/A in signature line.

4. Contractor/Grantee Signature

Prior to sending the agreement through the state signature process you must have your contractor sign the agreement. On amendments and renewals, the date of the contractor's signature must be prior to the termination date of the contract.

5. Agency Signature

The appropriate person within your agency must also sign the agreement prior to sending it through the signature process.

NOTE: All signatures on the contract must be **ORIGINAL** signatures. Signature stamps, Scanned signatures, and photocopied signatures are not acceptable.

6. Create an EDS Sheet

Executive Document Summary (EDS)

The Executive Document Summary was last revised effective July, 2006. The following information/instructions pertain to that form. The form is now available through Peoplesoft Financials. A link and other helpful tools are available at http://www.in.gov/idoa/2525.htm.

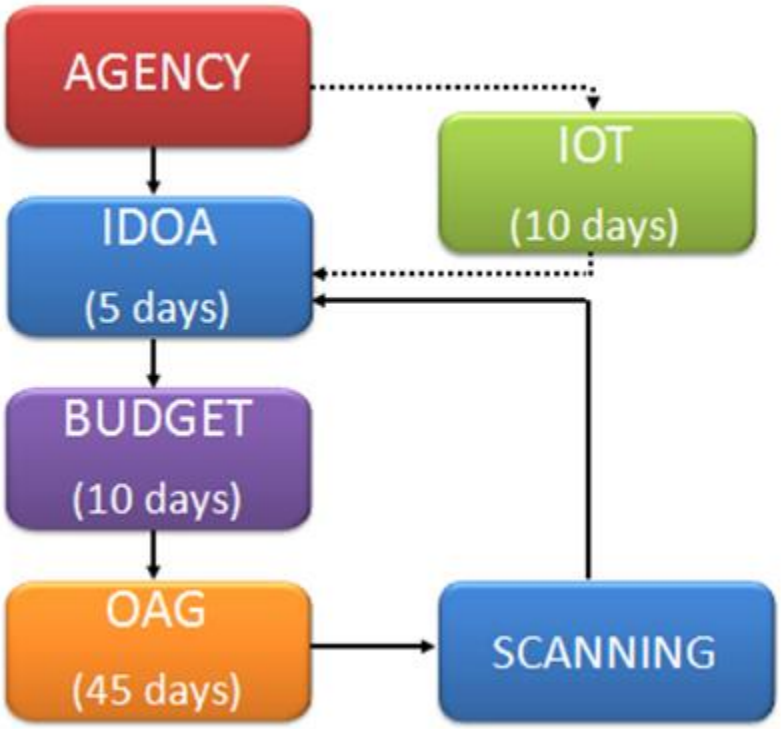
All contracts submitted for signature approvals must be accompanied by a fully completed Executive Document Summary (EDS) form. It is an essential part of the approval process. It is used by the Indiana Office of Technology (when applicable), Indiana Department of Administration, Budget, the Office of the Attorney General, and agency staff to track necessary contract information and to ensure that appropriate policies are followed.

It is essential that the information on the EDS be accurate. This information will be used in the development of reports such as the annual Professional Services and Minority and Women's Business Enterprises reports. Inaccurate information may reflect poorly on your agency, contribute to inaccurate reporting of contract information, and possibly lead to enhanced scrutiny on State Board of Accounts audits. Furthermore, inaccurate information could ultimately lead to the contract's rejection during the approval process.

The EDS is not part of the legally binding contract, so do not rely on box 37 of the EDS sheet alone to describe the contractor's duties. Those duties need to be described fully within the contract itself. All too frequently a contract is rejected (particularly amendments) because the agency has explained the duties on the EDS sheet, but has failed to include them in the contract or amendment.

If you have questions after reviewing the online EDS Workshop training (http://www.in.gov/idoa/2342.htm) or would like a copy of the PowerPoint so that it may be printed for reference, please email them to edshelp@idoa.in.gov.

7. State Signature Process



Contract Approval Process

Indiana Code section 4-13-2-14.1(a) requires that, after signature by the vendor and the agency, contracts must be approved by (1) IOT, (2) IDOA, (3) the State Budget Agency ("Budget"), and (4) the Office of the Attorney General ("OAG"). Unless your agency has specific delegated authority from IDOA or Budget, or is using a specific contract that has been given written form approval by the OAG within the last 12 months, it will have to be circulated through these 3 agencies for approval.

Sufficient lead-time should be given when preparing a contract so it can be reviewed and executed by the approving agencies. We suggest allowing **60 days** for this process. IDOA tries to review each contract within five (5) working days of receipt, as does Budget. By statute, the Office of the Attorney General is allowed forty-five (45) days to review a contract; however, the Advisory Division tries to do all reviews within 14 business days of receipt.

When you have assembled the fully signed contract (or grant) with all attachments and exhibits, the tax clearances, and the Indiana Economic Impact form (when applicable), put the completed EDS sheet on the top, and deliver it to IDOA's reception area (IGCS, 4th floor, Room W 479). If the contract involves information technology, it should be delivered directly to IOT (IGCN, 5th Floor, Room 551), attn: Sandy Jones. Unless you include other instructions, after it has been approved by IOT (if required) and IDOA, the contract will be forwarded to Budget, and Budget will forward it to the OAG.

Intranet Contract Tracking System

The Contract Tracking System ("KMS") has been designed to help agencies locate their contracts as they make their way through the signature process. This system is only available on the Intranet. Once the contract has been entered into KMS, you can retrieve information regarding the status of that contract.

1. To access the contract search site on the Intranet take the following steps:

2. Open your web browser and go to http://intranet.doit.state.in.us/IDOA/CSS.

3. Go to the drop down box in the upper right corner of the web page and select **Contract Search**.

4. When the "Welcome" page appears, read and click **Continue**.

5. You have reached the search criteria. Choose how you want to search, *i.e.* EDS number, Contractor's name, etc.

6. Click Search and the search results will appear.

7. To locate the routing information, click on the EDS number.

If you are unable to access the Intranet, please e-mail contracts@idoa.in.gov, or call Sandra Redding at (317) 232-3153.

1. IOT Approval

The Indiana Office of Technology ("IOT") must review and approve the following

1. All contracts involving information technology hardware: anything with a processor, including computers, tablets, scanners, printers, mobile or portable devices of all types, and peripherals
2. All contracts involving software, software development, and software support and maintenance
3. All database or software as a subscription contracts
4. All data sharing contracts
5. All contracts involving telecommunications

Contracts needing IOT approval should be delivered directly to IOT. The contracts are logged into KMS at IOT. IOT reviews for compliance with all IOT policies and standards, including accessibility standards as set forth in the contract boilerplate, and for compatibility with relevant state systems and programs. IOT approval of Grants involving information technology is delegated IF the grant (1) has the standard boilerplate accessibility language, and (2) is accompanied by Bill Pierce's Memo dated August 18, 2008. A copy of the Memo is posted with the templates on IDOA's intranet site.

2. IDOA Approval

Indiana Code 4-13-2-14.1(a) requires that IDOA review and approve contracts after signature by the vendor and the agency. IDOA **also** reviews contracts to determine whether the appropriate contents of the agreement have been included. The most common content issues that IDOA reviews are**:**

1. Whether the deliverables are clearly defined,
2. Was the proper procurement/solicitation procedure used,
3. Are the financial interests of the state and the rights of contractors protected,
4. Are the required boilerplate clauses present,
5. Is the vendor/grantee properly registered with the Secretary of State, and:
6. Whether all signatures are present (original signatures <u>not</u> copies, stamps or facsimile).

3. Budget Approval

Budget is required by Indiana Code § 4-12-1-13(d) and Indiana Code § 4-13-2-14.1(a) to review and approve contracts related to the operation and administration of state programs and offices. Budget reviews contracts to determine the financial impact of the contract to the agency. Further, Budget checks to determine whether budget related required terms are included (e.g. the "Funding Cancellation" clause required by FMS 2007-1). Finally, SBA considers the policy issues in regards to the budget (e.g. substantial spending with an out of state vendor, or unnecessary purchases or contracts).

4. Attorney General Approval

Indiana Code section 4-13-2-14.3 provides that the OAG "must review for form and legality contracts to which a state agency is a party….". "No contract is valid without [OAG] approval". *Citizens Energy Coalition v. Sendak,* 459 F. Supp. 248, 256 (S.D. IND. 1978).

Contract reviews are done by Deputy Attorneys General assigned to the Advisory Division of the office. Form and legality review ensures the contract contains not only the elements necessary to make the agreement binding on the parties, but also complies with law. The review includes the following

1. Confirming that all state required clauses are present and that the contract does not contain clauses that violate state law.
2. Checking for ambiguities or inconsistencies that may give rise to litigation *(i.e.*, missing or mislabeled exhibits / attachments).
3. Ensures that the correct form has been used (*i.e.* using the grant form when the agreement is a contract).
4. Checking to make sure that the contract signature process has been followed.

If the OAG finds a contract does not meet form and legality requirements, the contract must be disapproved in writing, with an explanation of how it is legally defective, and advice on how to make it compliant. The same statute gives the OAG up to 45 days to conduct this review.

5. Scanning

Once a contract has been approved by the OAG, it is picked up by IDOA and sent to scanning. This process is typically accomplished overnight, and the scanned contract is returned to IDOA. You will be notified when it is available for pickup at IDOA (IGCS, 4th floor, W 479).

Requests for copies of contracts prior to scanning must go through Sandra Redding and should be reserved for emergencies only.

Because all contracts are scanned, it is important for the agency to submit only information and documents that are appropriate for public disclosure. No contract submissions should include an individual's social security number or information classified as confidential either by state law, by your agency, or by a vendor. Refer to the Access to Public Records Act, IC 5-14-3-4, or contact the Public Access Counselor if you are uncertain about disclosable and non-disclosable information.

Exceptions to the Process

Outside Counsel

Consent to Hire Outside Counsel

Statutory Authority for Consent to Hire Outside Counsel:

- IC 4-6-5-3 provides that no agency, except as provided by this chapter, shall have the right to name, appoint, employ, or hire any attorney or special or general counsel to represent it or perform any legal service on behalf of such agency and the state without the written consent of the Attorney General.

- IC 4-6-2-11 provides that no claim in favor of the state shall be compromised without the approval of the governor and Attorney General, and such officers are hereby empowered to make such compromise when, in their judgment, it is the interest of the state so to do. This authority will not be delegated by the Attorney General.

There are various statutory exemptions giving an agency authority to hire its own outside counsel. Please consult the Indiana Code when in doubt.

- The OAG now requires that all outside counsel requests be submitted through an online form, available at http://apps.atg.in.gov/atginterapps/outsidecounselrequestform.aspx.

- After consent to hire outside counsel has been received, a state contract must be executed. Do not sign a letter of engagement. Please contact the Attorney General's office if this situation arises.

- All outside counsel amendment and/or renewal requests must be submitted to the Attorney General. A new consent letter will be issued for each amendment and/or renewal. A state amendment and/or renewal must be executed following consent.

Consent to Hire Outside Counsel on a Contingency Fee Basis

- IC 4-6-3-2.5 establishes the procedures that an agency must follow to enter a contingency fee agreement. The agency must make a written determination that contingency fee representation is cost effective and in the public interest. This determination is included in the online request form referenced above.

- Contingency fee agreements are subject to the approval of both the Attorney General and inspector general.

Form Approval

Form Approval and Pre-Review - Frequently Asked Questions

What is the difference Between a Form Approval and a Pre-Reviewed Contract? A form approval is a template form which may be used by an agency for one year from the date of approval. Contracts entered into within that year using the approved form do not have to be reviewed by the Attorney General for form and legality. No changes can be made to the approved form other than filling in the template blanks.

A pre-reviewed contract typically involves an out-of-the ordinary situation where the agency wants to make sure that once the contract is signed by the agency and the vendor, it will not be rejected by the OAG on a legality issue. A Deputy Attorney General ("DAG") in the Advisory Division will pre-review drafts and make suggestions so that when the contract is submitted for final approval, it will not be rejected, assuming all suggested legal changes are incorporated.

What are the advantages in using form approval? Use of form approved contracts has the advantage of speeding up the contract approval process and providing the contracting state entity with a consistent legal document that is lawful as to form and content. The form approved contract is intended for use when a contracting state entity anticipates a high number of contracts for the same purpose/services with different contractors. Once form approval is obtained, the individual contracts using the approved form do not have to be reviewed and signed by the OAG. Eliminating the OAG from the contract signature process potentially saves up to 45 days in the approval process since by state statute the OAG has 45 days to review contracts.

How to do I submit a contract for form approval? In order to seek form approval for a contract, you must fill out the form approval request form found at http://intranet.idoa.state.in.us/ contract/administration.stm, and submit the completed form and a Microsoft Office **Word** document containing your contract to the Attorney General at contracts@atg.in.gov**.**

Requirements for Form Approval

Form Approval Automatic Denials. As a matter of policy, the OAG will not give form approval for contracts when the Department of Administration has delegated approval and signature authority to the state entity that generated the contract.

Form Approval Request Sheet

A Form Approval Request Sheet must be submitted with all requests for form approval. The completed form must be signed by legal counsel for the agency. **You must submit one request sheet *per contract.*** A completed form is considered "signed" if e-mailed by anyone from the agency as a .pdf file with an actual or electronic signature from legal counsel; otherwise, the form must have legal counsel's name typed in and the e-mail must originate from counsel's e-mail account. ***If you intend to use mail merge for these contracts*** you **must** indicate this on the request form when submitting the contract for review.

Form Approval Contract Submission

Statutory Authority. The contracting entity's statutory authority for the contract must be included on the request form. The OAG also strongly encourages referencing the statutory authority in the body of the contract. ***Example*** *(DO NOT USE this as your statutory authority): "This grant is authorized by IC 5-19-1, IC 4-23-7.1 and other laws pertaining to local library systems. Grants will be made to libraries eligible to receive funds under the Library and Services Technology Act, 20 U.S.C. §§ 9121 to 9123."*

It is the agency's responsibility to stay apprised of any state or federal law affecting the contract and must notify the OAG immediately regarding a change of law. A change of law immediately invalidates the form approval status and the form should be resubmitted. This does not mean fully executed contracts based on the form become invalid; it means the form must be resubmitted for form approval to continue to use that process.

State Boilerplate. A draft of the contract that you are submitting for form approval must be submitted electronically in Microsoft Word format along with the request form. The OAG strongly encourages contracting entities to use the state's standard boilerplate clauses when drafting contract documents.

Prepared By Statement. In order to identify the creator of form approved contracts, a *prepared by* statement is required on the document. This will also satisfy the requirement for instruments that may be received for recording or filing under IC 36-2-11-15. This statement must appear at the bottom of the signature page of the contract.

In addition, an initial block should follow the *prepared by* statement. This is verification that each form approved contract has actually been reviewed by the agency legal counsel before execution. In this way, agency legal counsel ensures the initial and final integrity of the contract.

Expedited Requests. Please allow 30 days for review. We cannot guarantee all expedited requests will be granted. Any requests for expedited review must include the effective date of the contract and the reason for expedited review.

Formatting. Please follow the format used in the *Professional Services Contract Manual* to the maximum extent possible. All attachments should be labeled in alphabetical order beginning with A (ex. Exhibit A, Exhibit B, Exhibit C).

Approval Letter. Contracts that have received form approval will have the following statement in place of the regular Attorney General signature block: "*Form approval has been granted by the Office of the Attorney General pursuant to IC 4-13-2-14.3(e) on (approval date).*" The OAG will send a letter to the agency legal counsel or primary contact upon approval of the form approved contract. In addition, IDOA will be provided with copies of all form approvals to help monitor the integrity of the process.

Destruction of Old Forms. The OAG strongly encourages the agency legal counsel or contact person and all contract writers to destroy all electronic copies of old forms upon receipt of final approval of the new form contract.

Effective/Expiration Date. The form is approved for use as of the date of the letter. Approval expires exactly one year from that date. **Note: amendments or renewals of contracts with outside counsel must be approved by OAG for the amendment or renewal period.**

Name of Form Approved/Pre-Reviewed Contract. The OAG, for clarity, will assign a name and number to the form approved contract. When corresponding with the OAG or attempting to renew the form, please use this name and number.

Contracts that are form approved must still follow the regular state signature process, except they are not submitted to the OAG for signature.

Use of Form Approved Contracts

Changes to Form. Contracts that have been form approved will be in a template format. This document will have blank spaces for the contractor/grantee name, term, duties, etc. Only the blank spaces may be modified (referred to as a "filled-in form"). **Any other changes to the document are not permitted**. If any new contract provisions become required during the term of the form approval or if the contracting entity determines that other changes are needed in the contract document, the revised form **must be resubmitted** to the OAG for approval. The contracting entity cannot simply change or add language to a previously approved form and continue using the form.

FORM APPROVAL REQUEST SHEET

OAG Form 1028 (R0 / 07-13)

OFFICE OF ATTORNEY GENERAL
Advisory Services Division
Government Center South, 5th floor
302 W. Washington Street
Indianapolis, IN 46204

Contract Previously Form Approved? ☐ Yes ☐ No If previously approved, what was the approval number?	Requested Due Date	Effective Date of Contract	State Contracting Entity
Expedite Rationale (*if less than 30 days*)			
Contact Person	Title	Phone	Email
Program Area/Purpose of Contract			State Statutory Authority for Contract
Is there federal Statutory Authority? ☐ Yes ☐ No If yes, please specify			
Estimated number of contracts that will be executed using this form	Estimated dollar maximum of each contract (*you may give a range*)		
Does the contracting entity have, ***or will it seek to have***, delegated authority to approved/sign contracts on behalf of ☐ Budget Agency ☐ Department of Administration (*Delegation from DOA will result in an automatic denial of form approval*)			
Was the contract reviewed and approved by the contracting entity's legal counsel? ☐ Yes ☐ No If no, please explain why			
Name of Legal Counsel	Date Approved by Counsel	Will this document be Mail Merged? ☐ Yes ☐ No	

By signing this form, I certify that I understand the conditions for use of form approved contracts as set out in the *2015 Professional Services Contract Manual*. I understand that if *for any reason* it is determined by the OAG that the form approval process has been abused, the OAG may revoke the contracting entity's approval for use of all form approved contracts for an indefinite period of time. Abuse may include, but is not limited to, unauthorized changes to an approved contract template, use of a template by an unauthorized person, and continued use of an expired contract template.

Signature (*Legal counsel; if none, Director or Commissioner*)	Date
Printed Name	Title

Attorney Assigned	Date Approved
Form Approval Name	Form Approval Number

Rush Contracts

We recognize that situations may arise where a contract needs to be approved by a certain date and it was impossible for the agency to have begun the process far enough in advance to allow for the normal approval process time period. In these cases, we provide as a courtesy rush approval of contracts. We remind you that this is only a courtesy and our offices are not required to provide rush approval. Therefore, do not abuse the rush process.

If you need to have a contract rush approved you must do the following

1. Send an email to the following email addresses: contracts@idoa.in.gov, TArmstrong@sba.in.gov, and contracts@atg.in.gov. If your contract needs IOT approval also send an email to iotcontract@iot.in.gov.
2. The email must contain the following: EDS number, name of Contractor, the reason for requesting the rush, and the anticipated delivery time to IDOA.
3. On the EDS sheet, please write "RUSH" in red at the top or attach the rush request memo to the front of the document.

Please do not show up with a rush and expect to wait while someone reviews it. Also, do not have a vendor call directly. If you give us advance notice and a reasonable explanation, we will make every effort to accommodate you.

Citation List

Subject	Statute	Site
Accessibility Standards	IC 4-13.1-3	http://iga.in.gov/legislative/laws/2015/ic/titles/004/articles/13.1/chapters/003/
Advance Payments	IC 4-13-2-20	http://iga.in.gov/legislative/laws/2015/ic/titles/004/articles/13/chapters/002/
Contingency Fee Legal Services	IC 4-6-3-2.5	http://iga.in.gov/legislative/laws/2015/ic/titles/004/articles/6/chapters/003/
Employment Eligibility Verification	IC 22-5-1.7	http://iga.in.gov/legislative/laws/2015/ic/titles/022/articles/5/chapters/1.7/
FMC 98-2		http://www.in.gov/sba/files/fmc_98-2.pdf
Funding Cancellation	IC 5-22-17-5 FMC 2007-1	http://iga.in.gov/legislative/laws/2015/ic/titles/005/articles/22/chapters/017/ http://www.in.gov/sba/files/fmc_2007-1.pdf
Governing Laws	IC 34-13-2-3	http://iga.in.gov/legislative/laws/2015/ic/titles/034/articles/13/chapters/002/
Indemnity Prohibition	Ind. Const. Art. X, § 3	http://iga.in.gov/legislative/laws/const/#document-article-10
Insurance Limits	IC 34-13-3-4	http://iga.in.gov/legislative/laws/2015/ic/titles/044/articles/13/chapters/003/
Insurance Prohibition	IC 4-13-1-17	http://iga.in.gov/legislative/laws/2015/ic/titles/004/articles/13/chapters/001/
Investment in Iran	IC 5-22-16.5	http://iga.in.gov/legislative/laws/2015/ic/titles/005/articles/22/chapters/16.5/
Non-collusion	IC 5-22-16-6	http://iga.in.gov/legislative/laws/2015/ic/titles/005/articles/22/chapters/016/
Nondiscrimination	IC 22-9-1-10	http://iga.in.gov/legislative/laws/2015/ic/titles/022/articles/9/chapters/001/
Payments	IC 4-13-2-14.8	http://iga.in.gov/legislative/laws/2015/ic/titles/004/articles/13/chapters/002/
"Prepared by" Statement	IC 36-2-11-15	http://iga.in.gov/legislative/laws/2015/ic/titles/036/articles/2/chapters/011/
Prompt Payment/Interest	IC 5-17-5-1	http://iga.in.gov/legislative/laws/2015/ic/titles/005/articles/17/chapters/005/
Renewal	IC 5-22-17-4	http://iga.in.gov/legislative/laws/2015/ic/titles/005/articles/22/chapters/017/
Review for Form and Legality	IC 4-13-2-14.3 IC 4-13-2-14.1	http://iga.in.gov/legislative/laws/2015/ic/titles/004/articles/13/chapters/002/
Social Security Disclosure	IC 4-1-10 IC 4-1-11 10 IAC 5	http://iga.in.gov/legislative/laws/2015/ic/titles/004/articles/1/chapters/010/ http://iga.in.gov/legislative/laws/2015/ic/titles/004/articles/1/chapters/011/ http://www.in.gov/legislative/iac/iac_title?iact=10
Telephone Privacy	IC 5-22-23-7	http://iga.in.gov/legislative/laws/2015/ic/titles/005/articles/22/chapters/023/

Notes