

**PROFESSIONAL/PERSONAL SERVICES CONTRACT**  
**EDS# A145-9-126**

This Contract, is entered into by the **STATE OF INDIANA**, acting by and through the Indiana Office of Utility Consumer Counselor (hereinafter referred to at times as the "OUCC" or "Client"), and The Liberty Consulting Group offering professional services with offices at 65 Main Street, P.O. Box 1237, Quentin, Pennsylvania 17083 (hereinafter referred to as the "Contractor"). In consideration of those mutual undertakings and covenants, the parties agree as follows:

**Purpose of Contract:**

WHEREAS, the OUCC, with the approval of the Governor and the State Budget Agency, may employ examiners, experts, engineers, accountants and consulting firms with specialized expertise.

**Now therefore**, the purpose of this Contract is for the Contractor to assist the OUCC with regulatory and/or energy policy, alternative regulation, ratemaking expertise, utility operations, expenses, and revenue requirements and any other related proceedings.

The purpose includes, but is not limited to, selected filings, proceedings, rulemakings, hearings, workshops, and any other related activity of the Indiana Utility Regulatory Commission ("IURC"), the U.S. Congress, the Indiana General Assembly, courts of competent jurisdiction, or other bodies or groups. The purpose of such activity is to assure representation of Indiana ratepayers, pursuant to I.C. 8-1-1.1-1 et seq.

**1. Duties of Contractor:**

The Contractor shall perform all work as specified by the Settlement Agreement in Cause No. 42873 ("Settlement"), and the Audit Plan which has been approved by all parties to the Settlement. The Contractor guarantees the satisfactory performance of all such work. Contractor shall fulfill the following tasks and responsibilities:

The Contractor shall perform a series of audits of Duke Energy Indiana ("DEI") as required in the Settlement, concerning affiliate company transactions, including compliance with the affiliate standards approved in Cause No. 42873, including the training and controls that DEI has in place to prevent affiliate cross-subsidization, as well as an independent audit/examination of certain merger-related affiliate agreements.

As provided in the Settlement, the Contractor has been selected by mutual agreement among the OUCC, DEI and the other parties to the Settlement and the Contractor will work according to an Audit Plan, the Scope and Deliverables of which have been jointly agreed upon by the OUCC, DEI and other parties to the Settlement. As further provided in the Settlement and Audit Plan, the Contractor will report jointly to the OUCC, DEI and other parties to the Settlement. The Contractor will make such reports in writing and in meetings by teleconference and/or in person, as determined by OUCC, DEI and other parties to the Settlement. Pursuant to the Settlement,

DEI is providing Three Hundred Thousand Dollars (\$300,000) to the OUCC, to be deposited into a state account administered by the OUCC. Contractor shall submit all invoices to the OUCC, which shall pay the Contractor upon mutual agreement of all parties to the Settlement that the work has been performed according to the requirements of the Audit Plan. To the extent the funds provided to the OUCC exceed the cost of the audits; the Settlement provides that the OUCC will refund any remaining sums (including any interest) to DEI.

The audits cover the period from January 1, 2007 to December 31, 2007 and include:

- Audit of DEI's compliance with required Affiliate Standards adopted in that case, including an audit of the Affiliate Standards training and controls that DEI has in place to prevent affiliate cross-subsidization.
- Audit of certain affiliate agreements to which DEI is a party and which are identified in the Settlement, including the Service Company Utility Service Agreement, the Operating Company/Nonutility Companies Service Agreement, the Operating Companies Service Agreement, the Utility Money Pool Agreement, and the Agreement for filing Consolidated Income Tax Returns and For Allocation of Consolidated Income Tax Liabilities and Benefits.

The Contractor shall provide its audit reports to the OUCC, DEI and the other parties to the Settlement.

All written work product must be developed and delivered to the OUCC in Microsoft Word 2002 software or the latest version of Microsoft Word.

Contractor shall pursue completion of all services under this Contract in accordance with any procedural schedule of IURC Cause Numbers as listed above or any subsequent Cause No. associated with the listed utilities.

## **2. Consideration:**

The Contractor will be paid at the rate of:

<u>Individual's Name</u>	<u>Rate per Hour</u>
John Antonuk	\$235
Larry Koppelman	\$205
Randall Vickroy	\$205
Stephanie Vavro	\$195
Dennis Kalbarczyk	\$195
Analyst	\$125

for performing the duties set forth above. As provided under the Settlement, compensation will be paid from funds deposited by DEI in an account administered by the OUCC. The OUCC shall make payments to Contractor upon approval by the OUCC and other parties to the Settlement of the audit reports and invoices as provided in the Audit Plan. Total remuneration under this Contract shall not exceed Three Hundred Thousand Dollars and No Cents (\$300,000.00), including travel and travel related costs, which will be reimbursed based on current terms for state employees.

Should the Contractor need to replace any of the named individuals for any reason, the Contractor must promptly notify the OUCC, DEI and the other parties in writing. Any newly assigned staff must have equivalent professional experience and/or credentials and must be invoiced for services at the same hourly rate as the individual who has been replaced.

### **3. Term:**

The term of this Contract shall be from the date of execution until December 31, 2008 (the "Expiration Date"), unless sooner terminated as described in this Contract. Subject to the provisions of Paragraph 37 herein, this Contract may also be extended by mutual agreement, provided such extension is in writing and approved by the OUCC.

**The following paragraphs 4 through 47 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 47, "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:**

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 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. Audits:**

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.

### **7. 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

certifies that this Contract is not subject to further acceptance by Contractor when accepted by the State.

## **8. Changes in Work - Modified**

The scope of work is governed by the terms of the Settlement and the Audit Plan as approved by all parties to the Settlement. The Contractor shall not commence any additional work or change the scope of the work unless authorized by all parties to the Settlement. Should the parties determine that a change to the scope of work is necessary; the Contractor shall not commence any additional work or change the scope of work until authorized in writing by the State and all parties to the Settlement.

## **9. 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 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 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 Indiana Code § 4-2-6 et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the contractor is not familiar with these ethical requirements, the contractor should refer any questions to the State Ethics Commission, or visit the State Ethics Commission website at <http://www.in.gov/ethics/>. 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 and 4-2-7, 35-44-1-3, 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 its taxes, permit fees or other statutory, regulatory or judicially required payments to the State. Further, the Contractor agrees that any payments currently due to the State 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.
- 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.

- F. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.
- G. The Contractor warrants that the Contractor 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.
- H. The Contractor hereby affirms that it is properly registered and owes no outstanding reports with the Indiana Secretary of State.
- I. 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: (A) except for de minimis and nonsystematic violations, 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. Condition of Payment - Modified**

All services provided by the Contractor under this Contract must be performed in accordance with the terms of the Settlement / Audit Plan. The State shall not be required to pay for work that does not meet the requirements of the Settlement / Audit Plan. All parties to the Settlement must indicate to the OUCC their reasonable satisfaction with the work performed prior to the State's payment for services. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract, the Settlement and / or Audit Plan, or performed in violation of federal, state, or local statute, ordinance, rule or regulation.

## **11. Confidentiality of State Information - Modified**

The Contractor understands and agrees that data, materials, and information disclosed to 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 OUCC and the person or entity who may have disclosed any such confidential or protected material.

**12. Continuity of Services – Not Applicable**

**13. Debarment and Suspension – Not Applicable**

**14. 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 the appropriate measures to collect monies due up to and including the date of termination.

**15. Disputes:**

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 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 within ten (10) working days following notification in writing by either party of the existence of a dispute, then the following procedure shall apply:

1. The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.

2. 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 Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

## 16. Drug-Free Workplace Certification:

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 has been convicted of a criminal drug violation occurring in the Contractor's 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 paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, Contractor hereby further agrees that this contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts and grants from the State in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

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 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;
- 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.

**17. 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-complete agreements that may be in effect. This release will be at no cost to the State or the employee.

**18. 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 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.

**19. Funding Cancellation – Modified**

Pursuant to the Settlement, DEI is providing Three Hundred Thousand Dollars (\$300,000) to the OUCC, to be deposited into a state account administered by the OUCC. Contractor shall submit all invoices to the OUCC and Duke Energy Indiana contemporaneously, and the OUCC shall pay the Contractor. To the extent the funds provided to the OUCC exceed the cost of the audits; the Settlement provides that the OUCC will refund any remaining sums (including any interest) to DEI.

**20. Governing Laws:**

This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

**21. Indemnification:**

The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officers, and employees from all 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.

## **22. Independent Contractor:**

Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. 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 be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

## **23. Information Technology Enterprise Architecture Requirements – Not Applicable**

## **24. Insurance - Modified**

A. The Contractor shall secure and keep in force during the term of this Contract, the following insurance coverages, covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from this Contract:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$700,000 per person.
2. Automobile liability with minimum liability limits of \$700,000 per person.
3. An umbrella coverage policy with minimum liability limits of \$5,000,000, which is additional to the above coverages for commercial general liability and automobile liability.
4. 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 issued by the Indiana Department of Insurance.
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.

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.

**25. Key Person(s) –Not Applicable**

**26. Licensing Standards:**

The Contractor and 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 shall not be required to pay the Contractor for any services performed when the Contractor or its employees or subcontractors are not in compliance with such applicable standards, laws, rules or regulations. If licensure, certification or accreditation expires or is revoked, or if disciplinary action is taken against the applicable licensure, certification, or accreditation, the Contractor shall notify State immediately and the State, at its option, may immediately terminate this Contract.

**27. Material Incorporated or Referred to in Contract – Not Applicable**

**28. Merger & Modification - Modified**

This Contract, the Settlement and the Audit Plan 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, in any manner, except by written agreement signed by all necessary parties.

**29. Minority and Women's Business Enterprises Compliance.** The Contractor agrees to comply fully with the provisions of 25 IAC 5 and any participation plan that may have been submitted to the State.

The following MBE's and WBE's listed on the Minority and Women's Business Enterprises Division directory of certified firms will be participating in this Contract.

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

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### **30. 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 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 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, Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

### **31. Notice to Parties:**

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

A. David Stippler, Utility Consumer Counselor  
Indiana Office of Utility Consumer Counselor  
115 W. Washington St., Ste 1500 S.  
Indianapolis, IN 46204

B. Notices to the Contractor shall be sent to:

John Antonuk, President  
The Liberty Consulting Group  
65 Main Street  
P.O. Box 1237  
Quentin, Pennsylvania 17083

C. 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 Contractor with the Auditor of State.

### **32. Ownership of Documents and Materials - Modified**

The State and all parties to the Settlement will have access to all documents, records, programs, data, or other materials provided by DEI or developed by Contractor as a result of the work performed under this Contract, subject to an executed Nondisclosure Agreement with Duke Energy Indiana. All parties will be bound by the provisions of the Nondisclosure Agreement which shall prohibit the use or disclosure of these materials outside of the scope of this Contract. As provided in the Nondisclosure Agreement, all information subject to the Nondisclosure Agreement shall not be subject to public records' request without the consent of Duke Energy Indiana.

### **33. Order of Precedence – Not Applicable**

### **34. Payments – Modified**

All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the 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.

All invoices must include the attached worksheet (attached), itemized per person. Information on all invoices must include the IURC Cause number (42873), and specifically identify the nature and extent of the work performed, the name of the person(s) completing the work, the hourly rate for any person having completed work on the case, and the total number of hours (**in tenths of an hour increments**) required to complete the work. In addition, any expenses shall be specifically itemized and separately invoiced by Contractor. All invoices must be presented to the OUCC on a monthly basis and must be received by the OUCC no later than the 10th day of each month.

Invoices to the State shall be sent to:

Paula Romdall, Business Administrator  
Indiana Office of Utility Consumer Counselor  
115 W. Washington St., Ste 1500 S.  
Indianapolis, IN 46204

### **35. 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, and IC 34-13-1.

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.

### **36. Progress Reports:**

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.

### **37. Renewal Option- Not Applicable**

**38. Security and Privacy of Health Information. – Not Applicable**

**39. 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.

**40. 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.

**41. Taxes:**

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

**42. Termination for Convenience:**

This Contract may be terminated, in whole or in part, by the State 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.

**43. 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;
  - 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.

**44. 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. (Financial Management Circular (2003-1).

**45. 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.

**46. 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 Contractor shall grant such request.

**47. 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 contract clauses (as defined in the 2005 IDOA Professional Services Contract Manual) in any way except for the following clauses which are identified by name below:

- 8. Changes in Work - Modified**
- 10. Condition of Payment - Modified**
- 11. Continuity of State Information - Modified**
- 12. Continuity of Services - Not Applicable**
- 13. Debarment and Suspension - Not Applicable**
- 19 Funding Cancellation - Modified**
- 23. Information Technology Enterprise Architecture Requirements - Not Applicable**

- 24. Insurance - Modified**
- 25. Key Person(s) - Not Applicable**
- 27. Material Incorporate or Referred to in Contract - Not Applicable**
- 28. Merger and Modification - Modified**
- 32. Ownership of Documents and Materials - Modified**
- 33. Order of Precedence - Not Applicable**
- 34. Payments - Modified**
- 37. Renewable Option - Not Applicable**
- 38. Security and Privacy of Health Information - Not Applicable**

**THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY.**

**Non-Collusion and Acceptance:**

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

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

**The Liberty Consulting Group**

  
\_\_\_\_\_  
John Antonik  
President  
Date: June 12, 2008

**INDIANA OFFICE OF UTILITY  
CONSUMER COUNSELOR**

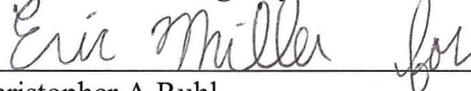
  
\_\_\_\_\_  
A. David Stippler  
Utility Consumer Counselor  
Date: June 26, 2008

**Department of Administration**

  
\_\_\_\_\_  
Carrie Henderson  
Commissioner  
Date: 9/23/08

**APPROVED as to Form and Legality:**

**State of Indiana Agency:**

  
\_\_\_\_\_  
Christopher A Ruhl  
Director  
Date: 9/26/08

**Office of the Attorney General**

  
\_\_\_\_\_  
Stephen Carter  
Attorney General  
Date: 9-29-08

**Governor of Indiana**

  
\_\_\_\_\_  
THE HONORABLE Mitchell G. Daniels, Jr., GOVERNOR  
Date: 10-6-2008