



EXECUTIVE DOCUMENT SUMMARY

State Form 41221 (R10/4-06)

Instructions for completing the EDS and the Contract process.

- 1. Please read the guidelines on the back of this form.
2. Please type all information.
3. Check all boxes that apply.
4. For amendments / renewals, attach original contract.
5. Attach additional pages if necessary.

5/24

SG

1. EDS Number: GA06-8-49-08-DA-9702
2. Date prepared: 1/24/2007

3. CONTRACTS & LEASES

X Professional/Personal Services
Contract for procured Services
Grant
Lease
Attorney
MOU
QPA
Contract for procured Services
Maintenance
License Agreement
Amendment#
Renewal #
Other

FISCAL INFORMATION

4. Account Number: 3760-17240.572900
5. Account Name: Various Programs
6. Total amount this action: \$8,500,000.00
7. New contract total: \$8,500,000.00
8. Revenue generated this action: \$0.00
9. Revenue generated total contract: \$0.00
10. New total amount for each fiscal year:
Year 2008 \$2,125,000.00
Year 2009 \$2,125,000.00
Year 2010 \$2,125,000.00
Year 2011 \$2,125,000.00

TIME PERIOD COVERED IN THIS EDS

11. From (month, day, year): 7/1/2007
12. To (month, day, year): 6/30/2011
13. Method of source selection: X RFP# 7-38
Negotiated
Emergency
Special Procurement
Other (specify)

AGENCY INFORMATION
14. Name of agency: Family & Social Services Admin
15. Requisition Number:
16. Address: Family & Social Services Claims Management
402 W WASHINGTON ST E436
INDIANAPOLIS, IN 46204

AGENCY CONTACT INFORMATION
17. Name: Bruce McKay
18. Telephone #: 317 2326487
19. E-mail address: bruce.mckay@fssa.in.gov

COURIER INFORMATION
20. Name: FSSA/Claims Mgmt./Contract Coordination
21. Telephone #: 317-233-4703
22. E-mail address: Contract.Status@fssa.in.gov

VENDOR INFORMATION
23. Vendor ID #: 0000064464
24. Name: INDIANA DISABILITY DETERMINATION CONSULT
25. Telephone #: (317) 684-7171
26. Address: CONSULTANTS LLC
11950 PROMONTORY CT
INDIANAPOLIS, IN 46236
27. E-mail address: silliamashipley@aol.com

28. Is the vendor registered with the Secretary of State? (Out of State Comorations must be registered) X Yes No
29. Primary Vendor: M/WBE
Minority: Yes X No
Women: Yes X No
30. If yes, list the %:
Minority: %
Women: %
31. Sub Vendor: M/WBE
Minority: Yes X No
Women: Yes X No
32. If yes, list the %:
Minority: %
Women: %
33. Is there Renewal Language in Yes X No
34. Is there a "Termination for Convenience" clause in the document? X Yes No

35. Will the attached document involve data processing or telecommunications systems Yes: IOT or Delegate has signed off on contract

36. Statutory Authority (Cite applicable Indiana or Federal Codes): IC 12-9-2-1 ET SEQ

37. Description of work and justification for spending money. (Please give a brief description of the scope of work included in this agreement.)
Provide psychiatric/psychological consultation services for the Disability Determination Bureau (DDB) pursuant to Indiana Code 12-9-2-1 et. seq. All services are provided by fully licensed physicians and/or psychologists, as appropriate, with licensure in the state of Indiana. Contractor's personnel shall provide consultation services employing their knowledge, training and experience and shall apply their expertise to the standards set forth in the Social Security Administration's Program Operations Manual for the Evaluation of Social Security Disability Claims.

38. Justification of vendor selection and determination of price reasonableness:
This contract was negotiated with the approval of Department of Administration through a competitive RFP process, RFP 7-38. The Contractor was selected for their ability and qualifications to provide these psychiatric/psychological consultation services.

39. If this contract is submitted late, please explain why: (Required if more than 30 days late.)

40. Agency fiscal officer or representative approval
41. Date Approved
42. Budget agency approval
43. Date Approved
44. Attorney General's Office approval
45. Date Approved
46. Agency representative receiving from AG
47. Date Approved



Received

MAR 15 2007

IDOA Contracts

RECEIVED

APR 09 2007

OAG-ADVISORY



**EXECUTIVE DOCUMENT SUMMARY**

State Form 41221 (R10/4-06)



Instructions for completing the EDS and the Contract process.

1. Please read the guidelines on the back of this form.
2. Please type all information.
3. Check all boxes that apply.
4. For amendments / renewals, attach original contract.
5. Attach additional pages if necessary.

1. EDS Number: <b>GA06-8-49-08-DA-9702</b>	2. Date prepared: 02/20/2007
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**3. CONTRACT & LEASES**

<input checked="" type="checkbox"/> Professional/Personal Services	<input type="checkbox"/> Contract for procured Services
<input type="checkbox"/> Grant	<input type="checkbox"/> Maintenance
<input type="checkbox"/> Lease	<input type="checkbox"/> License Agreement
<input type="checkbox"/> Attorney	<input type="checkbox"/> Amendment # _____
<input type="checkbox"/> MOU	<input type="checkbox"/> Renewal # _____
<input type="checkbox"/> QPA	<input type="checkbox"/> Other _____

**FISCAL INFORMATION**

4. Account Number: 3760/172400.572900	5. Account Name: Disability Deter Cons SFY08-11
6. Total amount this action: \$8,500,000.00	7. New contract total: \$8,500,000.00
8. Revenue generated this action:	9. Revenue generated total contract:
10. New total amount for each fiscal year:	
Year 2008 \$ 2,125,000.00	Year 2010 \$ 2,125,000.00
Year 2009 \$ 2,125,000.00	Year 2011 \$ 2,125,000.00

**TIME PERIOD COVERED IN THIS EDS**

11. From(month, day, year): 07/01/2007	12. To(month, day, year): 06/30/2011
13. Method of source selection:	
<input type="checkbox"/> Bid/Quotation	<input type="checkbox"/> Emergency
<input checked="" type="checkbox"/> RFP # 7-38	<input type="checkbox"/> Other (specify) _____
<input type="checkbox"/> Negotiated	<input type="checkbox"/> Special Procurement

AGENCY INFORMATION	
14. Name of agency: FSSA/DDARS/DDB	15. Requisition Number:
16. Address: 402 W. Washington St., W451 P.O. Box 28 Indianapolis, IN 46206-0028	

AGENCY CONTACT INFORMATION	
17. Name: McKay, Bruce A	18. Telephone #: (317) 232-6487
19. E-mail address: Bruce.McKay@fssa.in.gov	

COURIER INFORMATION	
20. Name: FSSA / COMMAND	21. Telephone #: (317) 233-4703
22. E-mail address: Contract.Status@fssa.in.gov	

VENDOR INFORMATION	
23. Vendor ID# 35-1954877	
24. Name: INDIANA DISABILITY DETERMINATION CONSULTANTS, LLC	25. Telephone #: (317) 684-7171
26. Address: 11950 PROMONTORY COURT Indianapolis, IN 46236	
27. E-Mail address: WILLIAMASHIPLEY@AOL.COM	
28. Is the vendor registered with the Secretary of State? (Out of State Corporations, must be registered) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
29. Primary Vendor: M/WBE Minority: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Women: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	30. If yes, list the %: Minority: 0 % Women: 0 %
31. Sub Vendor: M/WBE Minority: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Women: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	32. If yes, list the %: Minority: 0 % Women: 0 %
33. Is there Renewal Lanuage in the document? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	34. Is there a "Termination for Convenience" clause in the document? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

35. Will the attached document involve data processing or telecommunications systems(s)?  Yes: ITOC or Delegate has signed off on contract

36. Statutory Authority (Cite applicable Indiana or Federal Codes):  
I.C. 12-9-2-1 et. seq.

37. Description of work and justification for spending money. (Please give a brief description of the scope of work included in this agreement.)  
Provide psychiatric/psychological consultation services for the Disability Determination Bureau (DDB) pursuant to Indiana Code 12-9-2-1 et. seq. All services are provided by fully licensed physicians and/or psychologists, as appropriate, with licensure in the state of Indiana. Contractor's personnel shall provide consultation services employing their knowledge, training and experience and shall apply their expertise to the standards set forth in the Social Security Administration's Program Operations Manual for the Evaluation of Social Security Disability Claims.

38. Justification of vendor selection and determination of price reasonableness:  
This contract was negotiated with the approval of Department of Administration through a competitive RFP process, RFP 7-38. The Contractor was selected for their ability and qualifications to provide these psychiatric/psychological consultation services.

39. If this contract is submitted late, please explain why: (Required if more than 30 days late.)

40. Agency fiscal officer or representative approval John Parks <i>John Parks</i>	41. Date Approved 2-23-07	42. Budget agency approval Charles E. Schalliol <i>CS</i>	43. Date Approved
44. Attorney General's Office approval Stephen Carter <i>sub</i>	45. Date Approved 4-9-07	46. Agency representative receiving from AG	47. Date Approved

**PROFESSIONAL SERVICES CONTRACT**  
**EDS# 49-08-DA-9702**

This Contract ("this Contract"), entered into by and between the **Indiana Family and Social Services Administration, the Division of Disability and Rehabilitative Services** (the "State") and **Indiana Disability Determination Consultants, LLC** (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 Contractor shall provide the following services relative to this Contract:

Contractor agrees to provide psychiatric or psychological consultation services for the Disability Determination Bureau ("DDB") set forth in Indiana Code 12-9-2-1 et. seq. All services shall be provided by psychiatrists who have an unrestricted and non-probationary medical license issued by the state of Indiana or psychologists who possess a Health Services Provider license in Psychology (HSPP) issued by the state of Indiana.

Contractor shall provide said consultation services employing Contractor's knowledge, training, and experience and shall apply their expertise according to the standards set forth in the Social Security Administration's Program Operations Manual for the Evaluation of Social Security Disability Claims (the "Manual"). State will provide access to the Manual and other pertinent documents of the Social Security Disability program to Contractor.

In order to preserve and ensure the high degree of confidentiality required by federal law for the personal information of applicants for Social Security Disability Benefits in the case files, whether on paper or in the computer, Contractor shall provide said consultation services only at the State's Disability Determination Bureau offices at 2525 N. Shadeland Ave., Indianapolis, Indiana. State shall make available to Contractor office space and a computer with access to Social Security claims in said DDB offices for the Contractor to review and evaluate case files. Contractor may not remove any files or copy the paper or electronic files for the purpose of removing them from the DDB office.

Contractor may provide said consultation services at such times as Contractor may decide. Security access to State's DDB offices is from 6:00 a.m. to 12:00 midnight E.S.T., seven days per week. Access to the AS400 system will be limited to 7:00 am to 7:00 pm, local time, Monday through Saturday, subject to availability. There may be no access to the AS400 system on Sunday.

Contractor agrees that any case(s) not worked to completion may be reassigned to another consultant if Contractor is not available for consultation services at State's premises at 2525 N. Shadeland Ave., Indianapolis, Indiana for three (3) or more consecutive state business days. Contractor also agrees that Contractor forfeits the right to payment on any case that is reassigned.

Contractor also understands that there will be cases that Contractor has worked for which Contractor will not receive payment. Examples would include but are not limited to: cases in which no form is completed; cases that are transferred out of state; cases that are returned to the District Office with no medical decision, etc.

Contractor may receive the cases Contractor will review and evaluate at a location in said DDB offices to be designated by State. Cases will be grouped by specialty, i.e., mental, cardiac, orthopedic, etc. For the purposes of this contract Contractor will review only those cases for which Contractor is qualified, and which are made available. Contractor has agreed to review cases in the following specialties:

All adult and childhood mental cases

Contractor may determine how many cases Contractor shall review at any one time, but all cases received by Contractor must have all actions completed and returned to the Disability Determination Bureau's workflow of cases within ninety-six (96) hours after receipt.

Contractor agrees that all consultation services will be maintained at 95% accuracy, as evidenced by the case review and evaluation, performed by Social Security Administration. The case review commonly referred to as the Disability Quality Branch ("DQB") review consists of all levels of cases. Only Group I errors (decision and documentary, not referring to onset) defined as significant medical decision or documentation deficiencies will affect the computation of this accuracy rate.

State shall monitor Contractor's work and Contractor shall correct any deficient work product at no additional cost beyond the fee for the initial review and evaluation. "Deficient work product" means work not meeting established federal Social Security Administration program standards set forth in the Social Security Administration's Program Operations Manual for the Evaluation of Social Security Disability Claims (the "Manual") or work determined to be inadequate as a result of a federal quality assurance review.

The State is not responsible for, nor will it pay for any travel or other expense incurred by Contractor.

Contractor shall provide, at Contractor's own expense, any supplies required to perform the consultation services.

The State makes no representations or guarantees of any specific number of cases that will be available for review and evaluation by Contractor. The number and type of cases available for review and evaluation are determined by individuals making application for Social Security Disability benefits, and may vary from time to time. The services herein will not be full-time services. Contractor shall be free to provide services to others.

The State will provide computer access necessary for the performance of Contractor's duties.

The State may from time to time provide information concerning the Social Security Disability program, which may be given at a meeting, and State may invite Contractor to attend such meetings. Meetings will be for the purpose of disseminating new information that will be of benefit to Contractor in the performance of their duties under this agreement. Meetings will occur no more frequently than once per month. Contractor will not charge the State, and the State will not pay the Contractor, for attendance at these meetings.

Contractor shall attend Social Security Administration seminars as mandated by the Social Security Administration. The parties agree that should the Contractor be required to attend federally mandated training sessions, attendance at each hour of training will be paid at the rate equal to the completion of two (2) cases.

Contractor shall also provide training to DDB, as agreed upon by Contractor and the State. The parties agree that should Contractor provide training, each hour of training provided shall be paid at the rate equal to the completion of two (2) cases. Training sessions may vary in length from one (1) hour to three (3) days. Training sessions will occur no more frequently than twelve (12) times per year.

Contractor shall be paid at the rate equal to two (2) completed cases for each hour of administrative consultation provided by the Contractor to the State.

Contractor agrees to comply with all State and Federal statutes, rules and regulations and all rules and regulations of State relative to the review and evaluation of claims for Social Security Disability benefits.

## **2. Consideration**

The Contractor will be paid at the rate of \$40.00 per finished case. It is agreed that a case includes all claims bearing the identical name, the identical Social Security number and pending at the same level in the adjudication procedure.

The Contractor shall be paid at the rate of \$80.00 for each hour of attendance at federally mandated training attended by the Contractor.

The Contractor shall be paid at the rate of \$80.00 for each hour of training provided by the Contractor to the State.

The Contractor shall be paid at the rate of \$80.00 for each hour of administrative consultation provided by the Contractor to the State.

Total remuneration under this contract shall not exceed \$8,500,000.00. The rates of payment and total remuneration are identified on Attachment A, attached and incorporated by reference herein.

## **3. Term**

This Contract shall be effective for a period of four (4) years. It shall commence on July 1, 2007 and shall remain in effect through June 30, 2011.

#### **4. Access to Records**

Deleted

#### **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. 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.

#### **7. Authority to Bind Contractor.**

The signatory for the Contractor represents that Contractor/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 the Contractor when accepted by the State.

#### **8. Changes in Work**

The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.

#### **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 IC § 4-2-6 et seq., IC § 4-2-7, 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 Indiana State Ethics Commission, or visit the Indiana 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.

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. 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, registrations, 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 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.

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.**

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 any federal, state or local statute, ordinance, rule or regulation.

#### **11. 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 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.

#### **12. Conflict of Interest.**

A. As used in this section:

“Immediate family” means the spouse and the unemancipated children of an individual.

“Interested party,” means:

1. The individual executing this Contract;
2. An individual who has an interest of three percent (3%) or more of the Contractor, if the Contractor is not an individual; or
3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

“Department” means the Indiana Department of Administration.

“Commission” means the State Ethics Commission.

- B. The Department may cancel this Contract without recourse by the Contractor if any interested party is an employee of the State.
- C. The Department will not exercise its right of cancellation under section B, above, if the Contractor gives the Department an opinion by the Commission indicating that the existence of this Contract and the employment by the State of the interested party does not violate any statute or rule relating to ethical conduct of State employees. The Department may take action, including cancellation of this Contract, consistent with an opinion of the Commission obtained under this section.
- D. The Contractor has an affirmative obligation under this Contract to disclose to the Department when an interested party is or becomes an employee of the State. The obligation under this section extends only to those facts that the Contractor knows or reasonably could know.

### **13. Continuity of Services**

- 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.

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. 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. Deleted

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

#### **16. 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 or mediation 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.

## **17. 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 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 paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, the 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. 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 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 Option.**

Deleted

**19. 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.

**20. 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 Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

**21. 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.

**22. 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.

**23. 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.

**24. Information Technology Enterprise Architecture Requirements**

Deleted

**25. Insurance**

Deleted

**26. Key Person(s)**

Deleted

**27. 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, 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 the State immediately and the State, at its option, may immediately terminate this Contract.

**28. 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, 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.

<u>MBE/WBE</u>	<u>PHONE</u>	<u>COMPANY NAME</u>	<u>SCOPE OF PRODUCTS and/or SERVICES</u>	<u>UTILIZATION DATE</u>
<u>AMOUNT</u>				
NONE				

### 30. Nondiscrimination

Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this Contract. The Contractor shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Contract. The Contractor's execution of this Contract also signifies compliance with applicable federal laws, regulations and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

The Contractor understands that the State is a recipient of federal funds. Pursuant to that understanding, the Contractor and its subcontractor, if any, agree that if the Contractor employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the Contractor will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The Contractor shall comply with Section 202 of Executive Order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of this Contract.

### 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:

**Peter A. Bisbecos, Director**  
**Division of Disability and Rehabilitative Services**  
**402 West Washington Street**  
**P.O. Box 7083**  
**Indianapolis, IN 46207**

B. Notices to the Contractor shall be sent to:

**William A. Shipley, President**  
**Indiana Disability Determination Consultants, LLC**  
**11950 Promontory Court**

**Indianapolis, IN 46237**

**32. Order of Precedence; Incorporation by Reference.**

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#7-38, (4) Contractor's response to RFP#7-38, and (5) attachments prepared by the Contractor. All of the foregoing are incorporated fully by reference. All attachments, and all documents referred to in this paragraph are hereby incorporated fully by reference.

**33. Ownership of Documents and Materials.**

All documents, records, programs, data, film, tape, articles, memoranda, and other 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 transfers any ownership claim to the State and all such materials will be the property of the State. Use of these 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 these 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. Full, immediate and unrestricted access to the work product of the Contractor during the term of this Contract shall be available to the State.

**34. Payments**

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 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.

**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**

Deleted

### **38. Security and Privacy of Health Information.**

The Contractor agrees to comply with all requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in all activities related to this Contract, to maintain compliance throughout the life of this Contract, to operate any systems used to fulfill the requirements of this Contract in full compliance with HIPAA and to take no action which adversely affects the State's HIPAA compliance.

The parties acknowledge that the Department of Health and Human Services has issued the Final Rule, as amended from time to time, on the Standards for Privacy of Individually Identifiable Health Information, as required by HIPAA. To the extent required by the provisions of HIPAA and regulations promulgated thereunder, the Contractor covenants that it will appropriately safeguard Protected Health Information (PHI), as defined by the regulations, which is made available to or obtained by the Contractor in the course of its work under this Contract. The Contractor agrees to comply with applicable requirements of law relating to PHI with respect to any task or other activity it performs for the State as required by the final regulations.

### **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 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.

### **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**

Deleted

#### **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 the 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 current IDOA Professional Services Contract Manual) in any way except for the following clauses which are identified by name below:

- 4. Access to Records - Deleted
- 11. Confidentiality of State Information – Modified
- 13. Continuity of Services – Modified
- 14.B. Debarment and Suspension – Deleted
- 18. Employment Options – Deleted
- 24. Information Technology Enterprise Architecture Requirements – Deleted
- 25. Insurance – Deleted
- 26. Key Persons – Deleted
- 37. Renewal Option – Deleted
- 44. Travel – Deleted

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EDS# 49-08-DA-9702  
Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that Contractor/she is the Contractor, or that Contractor/she is the properly authorized representative, agent, member or officer of the Contractor, that Contractor/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 Contractor/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 understood the foregoing terms of this Contract, do by their respective signatures dated below hereby agree to the terms thereof.

**(Contractor:)**

By: William A. Shipley  
Printed Name: William A. Shipley  
Title: President, FDC  
Date: March 8, 2007

**(State of Indiana Agency):**

By: P.A. BL  
Peter A. Bisbecos, Director  
Division of Disability and Rehabilitative Services  
Date: 3/13/07

**Department of Administration**

Carrie Henderson (for)  
Carrie Henderson, Commissioner  
Date: 3/20/07

**State Budget Agency**

Charles E. Schalliol (for)  
Charles E. Schalliol, Director  
Director  
Date: 4/4/07

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

Stephen Carter (for)  
Stephen Carter, Attorney General  
Date: APRIL 9, 2007