

## **PROFESSIONAL SERVICES CONTRACT For INTERPRETATIVE SERVICES – FACE TO FACE**

This Contract, entered into by and between the State of Indiana, Department of Administration on behalf of All State Agencies (ASA) (the “State”) and Indy Translations, LLC. (The “Contractor”), is executed pursuant to the terms and conditions set forth herein.

WHEREAS, the State desires to contract with Contractor for Face to Face Interpretation services pursuant to RFP 9-82

WHEREAS, the Contractor has the necessary knowledge and expertise to provide such services,

WHEREAS, the Contractor shall extend the terms of this contract to political subdivisions, as part of the Professional Services Contract for face to face interpretation services and

NOW, THEREFORE, the parties agree as follows:

The following Definitions are agreeable,

A Professional Interpreter is defined as an individual who has studied interpreting, either in a school/university or through real-world training, who possesses the necessary skills and language aptitude to render the spirit and meaning of one language into the other and with at least three (3) years of demonstrable interpreting experience or a combination thereof.

### **1. Duties of Contractor**

Contractor shall provide the services set forth below, attached hereto and incorporated herein (the “Services”).

A). The interpreter shall accurately interpret the Limited English Proficient (LEP) individual’s statements and relay the message in its entirety with the meaning preserved throughout the conversation. Information shall not be edited or deleted that may erroneously change the meaning of the Limited English Proficient (LEP) individual’s statements.

B). Contractor shall provide services for the following languages, American Sign Language, Amharic, Arabic, Bosnian, Burmese, Cantonese, Czech, Dutch, Farsi, French, German, Greek, Gujarati, Hebrew, Hindi, Italian, Japanese, Korean, Mandarin Chinese, Polish, Portuguese, Punjabi, Russian, Serbian, Slovak, Spanish, Turkish, Ukrainian, Urdu, and Vietnamese.

C). Contractor shall determine the language of the individual through the following means at the State’s discretion:

- a). provide a short recorded message to distinguish the language at the beginning of the call to schedule face to face interpretation.
- b). provide dedicated phone numbers for most often requested languages that shall be placed on brochures websites and materials.

D). Contractor shall provide face to face interpretation in the following subject areas, not limited to:

- a). Agriculture
- b). Automotive
- c). Biomedical
- d). Business
- e). Industry

- f). Insurance
- g). Legal
- h). Multimedia
- i). Medical
- j). Pharmaceutical
- k). Child Welfare

- E). Contractor shall provide the following customer and technical support
  - 1). Contractor shall assign a Dedicated Account Manager in charge of maintaining, updating, and growing sales for face to face interpretation services.
  - 2). Contractor shall implement a software system that allows the State to access their accounts through a secure website with a password, and submit help tickets and questions to the State's Dedicated Account Manager.
  
- F). Contractor shall maintain services in the event of an emergency by following the Contractor's Emergency Business Continuity and Disaster Recovery Plan: review Exhibit E.
  
- G). Contractor shall ensure that all interpreters provided for face to face interpretation services shall be pre-qualified, tested and trained for industry-standard terminology.
  - 1). A professional interpreter is defined as an individual who has studied interpreting, either in a school/university or through real-world training, who possesses the necessary skills and language aptitude to render the spirit and meaning of one language into the other and with at least three (3) years of demonstrable interpreting experience or a combination thereof.
  
  - 2). In the event that a non-professional interpreter is required to provide services, the Contractor shall notify and receive written acceptance by the State prior to services being rendered including scheduling the appointment and prior to billable time beginning.
  
  - 3). Contractor ensures that all sign language interpreters provided for the State shall hold an Indiana Certification and meet all other qualifications and standards outlined in the Indiana Administrative Code #460 pursuant to IC 12-12-7-5 found at [http://www.state.in.us/fssa/files/460\\_Adm\\_Code\\_IIC.pdf](http://www.state.in.us/fssa/files/460_Adm_Code_IIC.pdf)
  
  - 4). Interpreter Training:
    - a). Contractor's staff interpreters and contracted independent interpreters shall complete code of ethics, HIPAA compliance, professionalism, role of interpreter, community interpreting training, Bridging the Gap, Echo or court certification.
    - b). Contractor's staff interpreters and contracted independent interpreters shall complete twenty (20) hours per year of continuing education.
  
- H). Contractor shall set up State accounts within the Contractor's system with each State agency utilizing the services prior to services being rendered. If necessary, set up coordination shall be memorialized in a program document between the Contractor and State agency. The program document shall be the result of a meeting to determine State agency business processes, reporting and invoicing requirements. Data elements shall be offered to the State include
  - 1). Contractor issued unique State number to the State

- 2). Contractor issued unique State agency ID numbers that may include categorization by location, agency, local office, department, cost center, project, and/or individual employee.
  
- I). Contractor shall provide service introduction and interpreter awareness training sessions to State in the format requested by the State agency. Training shall include but not be limited to:
  - 1). Contractor shall provide the following training to the State:
    - a). Contractor staff shall provide a thirty (30) minute presentation in the form of a DVD or downloadable file from Contractor website
    - b). Contractor shall provide a downloadable brochure.
    - c). Contractor shall provide cultural sensitivity and differences training upon State request.
  
  - 2). Contractor shall provide a minimum of 2,000 copies of a three-panel brochure on effective use of interpreters designed for the State within four weeks of contract execution at no additional cost to the State.
  
- J). Contractor shall only invoice for the following circumstances:
  - 1). Beginning at the scheduled appointment time or when the interpreter arrives whichever is later through the conclusion of services being required for the scheduled session to the nearest hour – 60 minutes.
  - 2). for the scheduled session time, including when the appointment is delayed due to the State facility or the Limited English Proficient (LEP) individual to the nearest hour – 60 minutes. In the event the Interpreter has waited for 45 minutes for the session to begin, the Interpreter shall seek to reschedule the appointment prior to the second billable hour beginning.
  - 3). for one hour in the event that the State does not cancel Interpretation services a minimum of twenty four (24) hours prior to the scheduled time.
  - 4). Travel expenses shall be limited to mileage from home or office, whichever is closest, to the destination and the return to the home or office. All travel must be approved per the requesting agency in advance of services being rendered. Expenditures made by the Contractor for travel shall be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures (see Travel Management Office website: <http://www.in.gov/idoa/2459.htm>) as specified in the current Financial Management Circular (see [http://www.in.gov/idoa/files/travel\\_policy.pdf](http://www.in.gov/idoa/files/travel_policy.pdf))
  - 5). Both the State and the Interpreter shall sign a time sheet attesting to the length of interpretation services provided or a cancellation. Interpreter shall provide the State a copy of the time sheet prior to the Interpreter's departure.
  
- K). Contractor shall bill the State per the rates on Exhibit C.
  
- L). Contractor shall provide a monthly invoice to the State Agency requesting the service. The invoice shall include the following information, not limited to:
  - 1). description of language,
  - 2). billable time,
  - 3). location,
  - 4). reason for interpretation,
  - 5). date and time services were rendered,
  - 6). Interpreter's contact number including identification number,
  - 7). contact information of the State requester of the services,

- 8). date when request was made,
- 9). the Contractor's quote identification number.

M). Contractor shall guarantee services or credit the State for the unsatisfactory interpretation service within 72 hours upon the State notifying Contractor's customer service, or the Contractor's Designated Account Manager for the State. State shall provide the Contractor the interpreter identification number, the date/time of the call, the State ID number, and the language requested.

N). In the event that Federal money becomes available to fund a portion of the services, the Contractor shall comply with any and all stipulations and reporting requirements.

O). Reporting:

- 1). Contractor shall provide special links to secure pages on the Contractor website for State to receive digital statements, records or invoices.
- 2). Contractor shall generate ad hoc report requests within twenty four (24) hours.
- 3). Contractor shall deliver usage reports a minimum of monthly to State Contract Manager and other State designated recipients at Quarterly Business Reviews or at time of request that includes, but is not limited to, the following fields,
  - a). Contractor issued unique State agency ID numbers,
  - b). county name,
  - c). date, time of session,
  - d). duration of sessions,
  - e). personal codes(s),
  - f). language,
  - g). interpreter ID number,
  - h). extended price.

P). Contractor shall assure quality of services by doing the following minimum follow up,

- 1). Contractor shall contact each Limited English Proficient (LEP) individual following each assignment to assure quality through Limited English Proficient (LEP) individual comments.
- 2). Contractor shall monitor during public interpretation events and conferences where confidentiality is not an issue through consecutive and simultaneous interpreters.

Q). Contractor shall dismiss any staff interpreter who has been found to have violated patient confidentiality, notwithstanding any other industry or legal action that may be taken. The State reserves the right to decline services from any interpreter that the State considers to provide inadequate interpretation.

R). The following Performance Metrics shall be used: (C)

- 1). Contractor shall identify language within (three) 3 minutes 95% of the time.
- 2). Contractor shall provide a professional interpreter 98% of the requested interpretations.
- 3). Contractor shall have Interpreter arrive a minimum of fifteen (15) minutes prior to scheduled appointment for 98% of the scheduled interpretations.

S). The State and Contractor shall follow this outlined Escalation process.

- 1). State to contact the Contractor's Designated Account Manager for the State.
  - a). State shall provide department/agency and provide the State unique number issued by Contractor.
  - b). Contractor shall resolve the issue within twenty four (24) hours of confirmed receipt of issue from State.

- 2). In the event that resolution is not met, the State shall contact the State's Designated Account Manager to escalate to Contractor Management.
  - 3). In the event that resolution is not met within seventy two (72) hours, the State's Designated Account Manager shall receive an emergency service number to reach Contractor Management so Contractor Management shall resolve, study, and make proposal of changes to avoid future incidents.
- T). Contractor shall accept the State's Purchasing Card as an optional form of payment. The Contractor shall accept any credit card-user handling fees associated with the acceptance of the State's Purchasing Card.
- U). In the event that the State participates in the acquisition of Interpretive services on behalf of another entity the Contractor shall invoice the non-State entity directly. The State is not responsible for distribution of invoice or collection of fees.
- V). On the occasion that the Contractor is unable to provide services within the State's required period of time, the Contractor understands and agrees that the State shall request and accept the services through another Interpretation provider.

## **2. Consideration**

Contractor shall be paid, in arrears, as set forth on Exhibit C, attached hereto and incorporated herein. The total remuneration under this Contract shall not exceed two hundred fifty thousand dollars and zero cents (\$250,000.00).

## **3. Term**

This Contract shall be effective for a period of twenty-four months (24) months. It shall commence on August 1, 2010 or date of final State approval, whichever is later, and shall terminate on July 31, 2012 or twenty four (24) months after date of final approval, whichever is later.

## **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 agreement. They shall make such materials available at their respective offices at all reasonable times during the contract period, and for three (3) years from the date of final payment under the contract, for inspection by the State or by any other authorized representative of state government. Copies thereof 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**

Following the expiration of this Contract, the Contractor shall arrange for a financial and compliance audit of funds provided by State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Uniform

Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The Contractor is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Contract. Audits conducted pursuant to this paragraph must be submitted no later than nine (9) months following the close of the Contractor's fiscal year. Contractor agrees to provide the Indiana State Board of Accounts and the State an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is the Contractor, and not of a parent, member, or subsidiary corporation of the Contractor, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State. The audit shall include a statement from the Auditor that the Auditor has reviewed this Contract and that the Contractor is not out of compliance with the financial aspects of this Contract.

#### **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 of Indiana.

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

In the event the State requires a major change in the scope, character or complexity of the work after the work has begun, adjustments in compensation to the Contractor shall be determined by the State in the exercise of its honest and reasonable judgment. 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 Indiana Code § 4-2-6 et seq., the regulations promulgated there under, 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 Indiana Code § 4-2-6, 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 of Indiana. Further, the Contractor agrees that any payments in arrears and currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

D. The Contractor warrants that it has no current or pending or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending, and agrees that it will immediately notify

the State of any such actions. During the term of such actions, Contractor agrees that the State may delay, withhold, or deny work under any Supplement or contractual device issued pursuant to this Contract and any supplements or amendments.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State of Indiana 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 of the Agreement 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**

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

## **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 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 or other personal information 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) or personal information (as defined in IC 4-1-11-3) 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.

Attached hereto and incorporated herein by reference as Exhibit D is a copy of Contractor's internal privacy/confidential information policy. Contractor agrees to comply with such internal privacy/confidential information policy with regard to data, materials, and information disclosed or otherwise provided to Contractor by the State under the terms of this contract.

## **12. Continuity of Services**

- A. The Contractor recognizes that the services under this contract are vital to the State and must be continued without interruption and that, upon contract expiration, a successor, either the State or another Contractor, may continue them. The Contractor agrees to:
1. Furnish phase-in training, and
  2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- B. The Contractor shall, upon the State's written notice:
1. Furnish phase-in, phase-out services for up to sixty (60) days after this contract expires, and
  2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required.

The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

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

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).

## **13. Debarment and Suspension**



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

#### **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, then the Contractor may cancel and terminate this Contract and institute the appropriate measures to collect all 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 against the State for such costs. If the State and the Contractor cannot resolve a dispute 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 in the State of Indiana 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 of Indiana 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 its best interest to hire and employee of the Contractor, the Contractor will release the selected employee from any non-compete agreements that may be in effect. This release will be at no cost to the State or 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**

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

#### **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 ventures 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.**

If Contractor provides any information technology related products or services to the State, Contractor shall comply with all Indiana Office of Technology (IOT) standards, policies, and guidelines, which are online at <http://iot.in.gov/architecture/>. Contractor specifically agrees that all hardware, software, and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC 4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in advance. The State may terminate this Contract for default if Contractor fails to cure a breach of this provision within a reasonable time.

#### **24. Insurance**

A. The Contractor shall secure and keep in force during the term of this Contract, the following insurance coverage, 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 and \$2,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.

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

3. 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.

5. 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 undersigned State agency prior to the commencement of this Contract.

## **25. Key Person(s)**

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

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

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

Key person(s) to this Contract is/are 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 agrees to notify State immediately thereof and the State, at its option, may immediately terminate this Contract.

**27. 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.

**28. 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 are 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>
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WBE, (765) 532-0617, The Language Connection, Inc., Spanish face to face interpretation services, Term of Contract, 3.6%

The Contractor agrees to submit a copy of the agreement entered into between the Contractor and each MBE/WBE subcontractor where the State took the selection of the MBE/WBE by the Contractor into consideration when issuing the procurement award. The copy of the agreement must be submitted to the MWBE Division in IDOA within ninety (90) days of the execution of the contract between the Contractor and the State. The Contractor also agrees to send all amendments, changes, and terminations to these agreements to the MWBE Division in IDOA within ninety (90) days of their execution. Failure to provide a copy of the agreement or subsequent amendment, change, and termination may result in exclusion from future State procurements. If the Contractor is not excluded from future procurements, the actions or inactions of the Contractor with regard to the above will be taken into account in all phases and scoring in future procurements. In addition, the Contractor must obtain the approval of the Division before changing any MBE/WBE participation plan submitted in connection with this Contract.

**29. 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.

### **30. Notices to Parties**

Whenever any notice, statement or other communication is to be sent to the State or to the Contractor, it shall be sent to the following addresses unless otherwise specifically advised:

#### **Notice to the Agency shall be sent to:**

Roxie Coble, Vendor Contract Manager  
State of Indiana, Department of Administration  
402 W Washington St  
W468  
Indianapolis, IN 46204

#### **Notice to the Contractor shall be sent to:**

William Zart, President  
Indy Translations, LLC.  
11495 N Pennsylvania St.  
Suite 270  
Carmel, IN 46032

### **31. Order of Precedence**

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 9-82, (4) Contractor's response to solicitation number RFP 9-82, and (5) attachments prepared by the Contractor. In the event of any conflict between the terms and conditions of this Contract and the provisions of any of the other documents identified in items (2), (3), (4) or (5) of the immediately preceding sentence, the terms and conditions of this Contract shall supersede and control.

### **32. 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. The Contractor shall provide the State full, immediate, and unrestricted access to the work product during the term of this Contract.

### **33. Payments**

- A. 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.

B. Any invoice submitted after thirty (30) days from the date services were rendered will NOT be reimbursed by the State.

**34. 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 required 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, the Parties stipulate and agree that any liability resulting from the State of Indiana's failure to make prompt payment shall be based solely on the amount of funding originating from the State of Indiana and shall not be based on funding from federal or other sources.

**35. 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.

**36. Renewal Option**

This contract may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed contract may be for one additional year for a limit of two renewals may not be longer than the term of the original contract. Any provision for automatic renewal is void.

**37. 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.

**38. 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 provision of this contract.

**39. Substantial Performance**

This contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.

#### **40. Taxes**

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

#### **41. 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 the best interest of the State. 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 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.

#### **42. 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 under this contract.

#### **43. Travel.**

No expenses for travel will be reimbursed unless specifically permitted under the scope of the services or consideration provision. 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.

#### **44. 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 or excuse shall be in writing and signed by the party claimed to have waived such right.



**45. Work Standards**

The Contractor agrees to 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.

**46. 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 in any way except for the following clauses which are identified by name below:

25: No Key Persons cited.

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28: Addition of M/WBE participation information

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30: Addition of Parties to Notice

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31: Addition of RFP # to Order of Precedence

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36: Addition of clarifying Renewal Option

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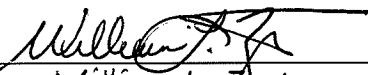
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**NON-COLLUSION AND ACCEPTANCE**

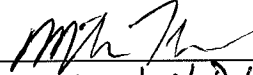
The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of his/her 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 of Indiana have, through duly authorized representatives, entered into this agreement. The parties having read and understand the foregoing terms of the contract do by their respective signatures dated below hereby agree to the terms thereof.

**Contractor:**

Signature:   
Printed Name: William L. Zart  
Title: President  
Date: July 27, 2010


**State of Indiana Agency:**

Signature:   
Printed Name: Michael Duhelle  
Title: Director  
Date: 8/8/10

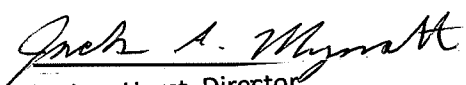
**Indiana Office of Technology**

N/A  
Brian Arrowood, Chief Information Officer  
Date: \_\_\_\_\_

**Department of Administration**

  
Robert D. Wynkoop, Commissioner  
Indiana Dept. of Administration  
8/24/10

**State Budget Agency**

  
Adam Horst, Director  
Date: 9-1-10

**Office of the Attorney General**

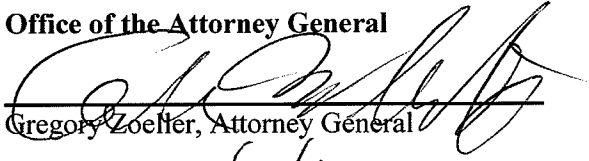
for   
Gregory Zoeller, Attorney General  
Date: 9/2/10

Exhibit C

This pricing is independent of the volume of minutes used during the life of this contract.

	Spanish	All Other Languages	Travel rate / mile
Face to Face Interpretation	\$40.00 per hour	\$60.00 per hour	Current State rate per Financial Management Circular
After Hours Face to Face Interpretation Any assignment that starts or continues past 5:30 pm up until 8:00 am Monday through Friday on regular State working days (pro-rated for that period that starts after 5:30 in the event of interpretations that start prior to 5:30); also includes weekends and State-observed holidays.	\$57.00 per hour	\$57.00 per hour	Current State rate per Financial Management Circular
Non-professional interpreters	\$35.00 per hour	\$50.00 per hour	Current State rate per Financial Management Circular
American Sign Language	\$50.00 per hour	\$50.00 per hour	Current State rate per Financial Management Circular
Court Ordered Interpretation	\$40.00 per hour	\$60.00 per hour	Current State rate per Financial Management Circular

Exhibit D:

**INDY TRANSLATIONS CONFIDENTIALITY AGREEMENT**

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THIS AGREEMENT is hereby executed and effective this \_\_\_\_ day of \_\_\_\_ 2010, between Indy Translations, LLC (Company) and \_\_\_\_\_ (Vendor), and their representatives, employees, agents and consultants.

I hereby agree that all knowledge and information expressly identified in writing as confidential which Vendor acquires during the term of this agreement regarding the business and products of Indy Translations, LLC shall be maintained in confidentiality by Vendor and, except as expressly authorized by Indy Translations, LLC in writing, shall not be divulged or published by Vendor and shall not be authorized by Vendor to be divulged or published by others.

Vendor agrees to the following paragraphs (1-9) and affirms that they fully understand, and will comply with the statements herein.

1. Confidential Information. "Confidential Information" means any confidential, proprietary or non-public information, whether written or oral, tangible or intangible, of or concerning the Company and parties with whom the Company does business, but excludes information generally available to the public other than as a result of a disclosure by you or your representatives (but only after which such information was so generally available).

2. Use of Confidential Information. The Confidential Information shall be used solely for the purpose of evaluating and negotiating the Transaction and for no other purpose.

3. Disclosure of Confidential Information. You will keep Confidential Information confidential and not, without prior written Company consent, disclose it to anyone.

4. Ownership and Return of Confidential Information. The Confidential Information is and shall remain the sole and exclusive property of the Company and nothing in this Agreement or any course of conduct between you and the Company shall be deemed to convey to you any rights in or to any portion of the Confidential Information. You agree to return or destroy all such information and certify as to same within ten day of the Company's request.

5. No Representation or Warranty; Limitation on Liability. No representation or warranty is made as to the accuracy or completeness of any information provided hereunder.

6. Non-Solicitation. You agree that you will not for a period of three (3) years from the date hereof, contact, solicit the employment of or employ, any officer, director or employee of the Company with whom you have had contact during the period of your evaluation of the Transaction or with respect to whom information is included in the Confidential Information who is, or at any time during the preceding twelve (12) months was, employed by the Company.

7. Remedies. The Company shall be entitled to equitable relief to prevent breaches of this Agreement and to specifically enforce the terms and provisions hereof. You agree to indemnify the Company against any costs, demands or liabilities arising directly or indirectly from a breach by you or your Representatives of any terms or provisions of this Agreement.

8. Miscellaneous. This Agreement will be governed and construed in accordance with the laws of the State of Indiana, USA, without regard to conflicts of laws principles. You will be responsible for all attorney fees if you breach this Agreement. The terms of this Agreement shall survive the termination of the discussions regarding the Transaction with the Company.

9. Reciprocity. All of the rights of the Company hereunder shall apply likewise to you, and

each and every one of your obligations hereunder shall apply likewise to the Company.

[Vendor]

Indy Translations

By: \_\_\_\_\_  
Name:  
Title:

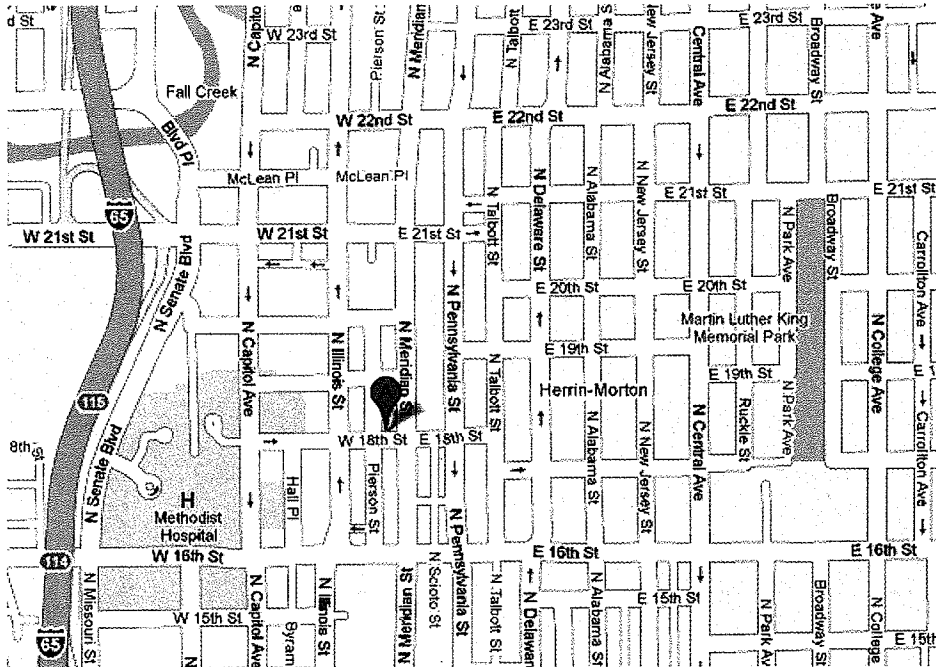
By: \_\_\_\_\_  
Name:  
Title:

### Exhibit E: Emergency Business Continuity and Disaster Recovery Plan

In the event of fire, flood, tornado, theft, natural disaster, extended power outages or acts of God (except snow emergencies) that make doing business from our main offices difficult or impossible, the following Emergency Business Continuity Plan will take effect on the first business day following such an event. Are personnel are asked to call Bill Zart as soon as possible at any of the following numbers listed below in the event of an emergency to learn what emergency procedures will be taken.

**Main Corporate Office:** 11495 N. Pennsylvania St., Suite 270 Carmel, IN 46032

**Emergency Location:** Indianapolis Office 1800 N. Meridian St., Suite 506 Indianapolis, IN 46202



### Key Personnel Contact Information

- Bill Zart – (317) 501.0853 or (317) 663.4657
- Kelly Hocker – (317) 501.0858
- Annamaria Proksch – (317) 845.0767
- Jennifer Porter –

In the event of an emergency where neither Bill Zart or Kelly Hocker are available, please contact:  
Linda Zart – (540) 381.0470 or (540) 204.3485

### Communications

- All telephone lines can be forwarded to the downtown office location remotely. The remote forwarding number is 822-8373
- Email can be accessed by going to: [mail.indytranslations.com](mailto:mail.indytranslations.com) and entering your user name and password. You will be able to retrieve mail up to three days' old that has previous been downloaded to your computer.
- We ask that you bring any company laptops with you to remote locations.
- Please bring your cellphones to work at the emergency location in case they are needed.
- The emergency fax number at the Indianapolis office is 317.924.5176.