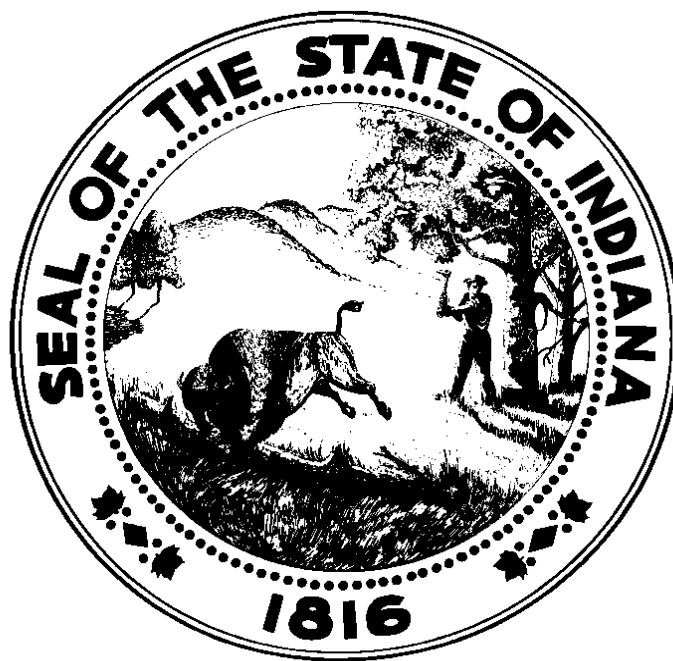


# 2020 Professional Services Contract Manual

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February, 2020



OFFICE OF THE INDIANA ATTORNEY GENERAL

*Curtis T. Hill, Jr., Attorney General*

INDIANA DEPARTMENT OF ADMINISTRATION

*Lesley A. Crane, Commissioner*

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## Introduction

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The Office of the Indiana Attorney General and the Indiana Department of Administration are pleased to present the *2019 Professional Services Contract Manual*.

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

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

Department of Administration Contract Management Section:

John Snethen           (317) 234-2718           JSnethen@idoa.in.gov

Sandra Redding       (317) 232-3153           contracts@idoa.in.gov

Office of the Attorney General – Advisory Division, Contracts Section

William Anthony      (317) 234-2354           William.Anthony@atg.in.gov

Molly Skarbeck       (317) 234-6667           contracts@atg.in.gov

If you have suggestions for improving the *Manual* or the contract review process, please let us know!

# **What to Know before Beginning the State Contracting Process**

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## **Guidelines for Ethical Contracting Practices-**

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

General standards of ethical conduct for State employees are found in the *Indiana Code of Ethics*, 42 IND. ADMIN. CODE (IAC) 1. A State employee who violates the *Indiana Code of Ethics* may be subject to State Ethics Commission sanctions and/or agency disciplinary action. Pursuant to 42 IAC 1-7, State employees may have any ethics question reviewed and decided by the State Ethics Commission. Pursuant to 42 IAC 1-8, a State employee may seek a confidential informal advisory opinion from the Office of the Inspector General. If you have a question about a specific action, please contact the State Ethics Commission or the Office of the Inspector General directly.

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

### ***Social Security Number Protection and Breach Notification***

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

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

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

## **How to Choose a Contractor**

Pursuant to IC 5-22-4-1, and except as provided in Chapter 4, the Indiana Department of Administration (IDOA) is the purchasing agency for all agencies of the executive branch. IC 5-22-6-1 provides that "the purchasing agency of a governmental body may purchase services using any procedure the governmental body or the purchasing agency of the governmental body considers appropriate." IDOA construes "any procedure the . . . agency considers appropriate" to mean one of those methods described in IC 5-22, for example, competitive bidding, request for proposals, or a special procurement under IC 5-22-10.

More information about IDOA procurement can be found at this link: <https://www.in.gov/idoa/2865.htm>.

## Special Procurements

If you are not obtaining a service under a competitive bid or a request for proposals (“RFP”), then you may submit a request to IDOA for a special procurement. Requests for special procurement should be submitted electronically to [idoaspecprocreq@idoa.in.gov](mailto:idoaspecprocreq@idoa.in.gov). Your request should identify with specificity the statutory authority found in IC 5-22-10 for the procurement. Here are some helpful links:

Instructions for filling out the special procurement request form:

<https://forms.in.gov/Download.aspx?id=9579>.

Special procurement request form: <https://forms.in.gov/Download.aspx?id=9579>.

IC 5-22-10 describes the circumstances under which a special procurement is permitted:

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

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

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

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

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

- (a) A purchasing agent may make a special purchase when there exists, under emergency conditions, a threat to public health, welfare, or safety.
- (b) The counterterrorism and security council established by IC 10-19-8-1 may make a purchase under this section to preserve security or act in an emergency as determined by the governor.

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

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

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

**IC 5-22-10-8. Compatibility of equipment, accessories, or replacement parts.** A purchasing agent may make a special purchase when: (1) the compatibility of equipment, accessories, or

replacement parts is a substantial consideration in the purchase; and (2) only one (1) source meets the using agency's reasonable requirements.

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

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

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

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

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

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

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

- (a) A purchasing agent may purchase supplies if the purchase is made from a person who has a contract with a federal agency and the person's contract with the federal agency requires the person to make the supplies available to the State or political subdivisions.
- (b) A purchasing agent for a political subdivision may purchase supplies if the purchase is made from a person who has a contract with a State agency and the person's contract with the State requires the person to make the supplies or services available to political subdivisions, as provided in IC 4-13-1.6 or IC 5-22-17-9.

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

- (a) A purchasing agent may acquire supplies if the purchasing agent determines that the governmental body can obtain the transfer of the supplies from the federal government under IC 4-13-1.7 at a cost less than would be obtained from purchase of the supplies by soliciting for bids or proposals.
- (b) A governmental body may not make a purchase under this section if title to the property will be transferred to the governmental body before a sufficient appropriation to pay the costs of the purchase is appropriated. However, if the supplies will be transferred to the governmental body upon conditional sale or under a lease, a lease with option to purchase, or a contract for the use of the supplies, the governmental body may make the purchase under this section if there are sufficient funds appropriated to pay the consideration required for one (1) year of the agreement.

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

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

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

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

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

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

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

## **Contract Term & Termination**

It is IDOA's policy that a contract term shall not exceed four years. This policy applies to all contracts, including but not limited to zero dollar contracts and revenue generating contracts. If there are compelling business reasons to exceed the four-year limit, please document those reasons in a special procurement request and submit to [idoaspecprocreq@idoa.in.gov](mailto:idoaspecprocreq@idoa.in.gov) for approval. This approval should be sought well in advance of the expiration of an existing contract.

IDOA has established a process to assist you when an agency has determined that contract termination is in its best interest. Please use the termination request form at <http://www.in.gov/idoa/files/ContractTerminationRequest.pdf> and submit to [contract\\_termination@idoa.in.gov](mailto:contract_termination@idoa.in.gov) with sufficient time for IDOA's review and approval before notice of termination is sent to the contractor pursuant to the contract terms.

## **Minority and Women's Business Enterprises Division**

IDOA's Minority and Women's Business Enterprises ("M/WBE") Division of Supplier Diversity ("DSD") is established by IC 4-13-16.5 and further controlled by 25 IAC 5. As required by statute, the DSD certifies minority and women's owned business enterprises. IC 4-13-16.5-3(b)(5) also requires "all state agencies, separate bodies corporate and politic, and state educational institutions to report [to DSD] on planned and actual participation of minority and women's business enterprises in contracts awarded by state agencies."

The DSD works with the Governor's Commission on Minority and Women's Business Enterprises to establish annual goals for the use of minority and women's business enterprises. These goals are updated annually and are to be derived from a statistical analysis of the utilization study of State contracts that is required to be conducted every five (5) years. Inclusion of a contractor's utilization of a minority or women's business in the contract itself is a tool used by the DSD to ensure prime contractor compliance, as set forth in 25 IAC 5, with the participation terms of the contract.



Because the award of a contract may have been based, in part, on the Minority and/or Women's Business Enterprise ("MBE" and/or "WBE") participation plan as detailed in the Minority and Women's Business Enterprises Subcontractor Commitment Form, commonly referred to as "Attachment A" in the procurement documentation, any changes to this information during the contract term must be approved by MWBE Compliance and may require an amendment to the contract. It is the State's expectation that the Contractor will meet the subcontractor commitments during the contract term. If a change to the subcontractor participation plan is requested, please follow this process:

1. A request to DSD must be received on the prime contractor's letterhead detailing the request for a change to the subcontractor participation plan and signed by the company official. The request should be addressed to Maia Siprashvili-Lee, Deputy Commissioner of the Division of Supplier Diversity, and emailed to Kesha Rich, Deputy Director of Development & Compliance, at [krich@idoa.in.gov](mailto:krich@idoa.in.gov), for initial review.
2. The request must include the following information:
  - a. the reason for the change,
  - b. the name of the certified replacement firm or additional firm,
  - c. the scope of services to be performed by the firm, and
  - d. the percentage of the contract being added or removed from that firm.

Changes to the contract terms should be included in an amendment to the contract.

### **Indiana Veteran-Owned Small Business Enterprise Program**

The Indiana Veteran-Owned Small Business Enterprise Program ("IVOSB") was instituted when former Governor Pence issued Executive Order 13-04 to provide additional economic opportunities for veteran-owned businesses by setting a goal of achieving at least 3% of the State of Indiana's competitive purchase of goods and services with such companies. The General Assembly later codified this mission in Indiana Code 5-22-14-3.5, and IDOA subsequently promulgated rules for this program at 25 IAC 9.

The goal of the program is to help men and women who return home after serving our country to start or expand their own business. Annually, IDOA is required to prepare and submit a report to the Governor and to the public, which shall describe the activities and efforts conducted by the State and the outcome, progress and the achievements made by this initiative.

To be eligible for certification as an IVOSB, an Indiana firm has two options. One option is to be certified directly with the State of Indiana, which requires the entity to have its principal place of business (as defined by IC 5-22-14-3.5) located in Indiana and be owned and controlled by veteran(s) ("veteran" as defined by IC 5-22-14-3.5) and submission/acceptance of an application to the IVOSB Program within the Indiana Department of Administration. The second option recognizes IVOSBs that are certified by the U.S. Department of Veterans Affairs as a veteran-owned business. The State of Indiana will utilize the Federal Center for Veterans Business Enterprise and its VetBiz registry that follows the guidelines as set by Veterans Business Regulations (38 CFR Part 74) to determine eligibility.

Because the award of a contract may have been based, in part, on the IVOSB participation plan as detailed in the IVOSB Subcontractor Commitment Form, commonly referred to as "Attachment A-1" in the procurement documentation, any changes to this information during the contract term must be approved by IDOA's IVOSB Division ("IVOSB Division") and may require an amendment to the contract. It is the State's expectation that the Contractor will meet the subcontractor commitments during

the contract term. If a change to the subcontractor participation plan is requested, please follow this process:

1. A request to the IVOSB Division must be received on the prime contractor's letterhead detailing the request for a change to the subcontractor participation plan and signed by the company official. The request should be emailed to [IndianaVeteransPreference@idoa.IN.gov](mailto:IndianaVeteransPreference@idoa.IN.gov) for review and approval.
2. The request must include the following information:
  - a. the reason for the change,
  - b. the name of the certified replacement firm or additional firm,
  - c. the scope of services to be performed by the firm, and
  - d. the percentage of the contract being added or removed from that firm.

Changes to the contract terms should be included in an amendment to the contract.

### **Employment Eligibility Verification (E-Verify)**

E-Verify is the United States [Department of Homeland Security](#) (DHS) web-based system that allows businesses to determine the eligibility of their employees, both U.S and foreign citizens, to work in the United States. **It is fast, easy and free.** Information on the E-Verify program can be found at: <http://www.dhs.gov/e-verify>.

IC 22-5-1.7-11 mandates:

- (a) A state agency ... may **not** enter into or renew a **public contract for services** with a contractor unless ... **the public contract contains ... a provision** requiring the contractor to enroll in and verify the work eligibility status of all newly hired employees of the contractor through the E-Verify program . . . . (b) A state agency or political subdivision may not award a **grant** of more than one thousand dollars (\$1,000) to a business entity unless the business entity ... signs a sworn affidavit that affirms that the business entity has enrolled and is participating in the E-Verify program.” (emphasis added).

“Services,” as defined in IC 5-22-2-30 means “the furnishing of labor, time, or effort by a person, not involving the delivery of specific supplies other than printed documents or other items that are merely incidental to the required performance.”

All contract and grant templates have a mandatory E-verify clause which contains the language required by our statute. State agencies, in lieu of the grant clause, may elect to have the Grantee sign an affidavit which is also provided in this manual. The affidavit must be attached to the grant agreement.

Contractors or grantees who are not already enrolled, or who want to check to see if they are enrolled, should go to:

<https://www.uscis.gov/e-verify/e-verify-enrollment-page>  
<https://e-verify.uscis.gov/enroll/>

Contractors and Grantees who are self-employed and who do not have any employees need not enroll or participate in the E-Verify program.

You can check the enrollment status of a contractor by checking the participating employer database: <https://www.e-verify.gov/about-e-verify/e-verify-data/participating-employers>

Exception: A “contractor” for the purposes of our e-verify statute is a private entity. State agency contracts with local units of government and tax-supported State educational institutions do not have to have the e-verify clause because those entities are required to have enrolled already.

## **Independent Contractor Determination**

It is the agency’s responsibility to ensure all contractors and employees are appropriately classified. Personal Service contracts which create or appear to create an employment relationship under IRS guidelines cause grave tax consequences for the agency and potential inequities to the individuals providing the services. Special consideration should be given to the contract preparation when entering into a professional services contract with a former state employee. Consultation with the Auditor of State or other state agencies is recommended prior to initiation of the contracting process.

If your contract appears to contain several employee indicators, you may wish to contact the State Personnel Department or an Auditor of State representative for guidance. Your agency may be required to analyze in writing the service sought in relation to the IRS factors. If so, the agency must retain the analysis and keep it in the particular contract file for audit purposes. The IRS’s most recent independent contractor test is located at <http://www.irs.gov/pub/irs-pdf/p15a.pdf>.

## **SCM (“Supplier Contract Management”) - Electronic Contracting Process**

Statutory Background: Ind. Code 4-13-2-14.1 (c) authorizes IDOA to adopt a procedure for the electronic approval of contracts. As the result of collaboration with the Office of the Attorney General, the State Budget Agency, the Indiana Office of Technology, the Auditor of State, the State Board of Accounts and the Office of Management and Budget, IDOA selected SCM as the methodology to be used for electronic signing and approval of contracts. The procedure is compliant with the Uniform Electronic Transaction Act (IC 26-2-8). IDOA’s Memorandum authorizing this process, giving the statutory analysis and explaining how it work is found at [https://www.in.gov/idoa/files/Electronic\\_Contracting\\_Authority\\_Memo.pdf](https://www.in.gov/idoa/files/Electronic_Contracting_Authority_Memo.pdf)

IDOA maintains a webpage devoted exclusively to SCM. It contains extensive materials and tutorials. Please visit it first whenever you have a question. <https://www.in.gov/idoa/3016.htm> After attending the Contractor Administrator classroom session, you will be added to the listserv account and have the *SCM NewsFlash* updates delivered to your e-mail inbox.

## **IT Contracts & the “Cloud”**

- 1) IOT must approve all cloud contracts. Please involve IOT in your cloud projects as early as possible.
- 2) IOT’s template cloud terms are intended to protect the State and its data. They are required but not mandatory. Therefore, they are to be used unless there is a strong justification for not using them. You should be able to articulate, in writing, why they can’t be accepted by a particular vendor or must be modified. The greater the risk of harm or loss to the State, the greater (and more detailed) the justification should be.
- 3) Some vendors – the more established and sophisticated ones – will typically have their own cloud terms. IOT may very well accept such a vendor’s terms - if it is determined that the State will be appropriately protected under them and that the risk of harm or loss with the vendor in question is

low. But you are still required to submit their terms to IOT for review and approval. Sometimes, one vendor will use another vendor - like Amazon or Microsoft - to deliver cloud services. This adds a level of complexity to the negotiations. But it is common in the industry, and IOT is happy to help you through these situations.

- 4) IOT has three different sets of cloud term templates: one for Software as a Service (SaaS), one for Platform as a Service (PaaS), and one for Infrastructure as a Service (IaaS). They can be found with the other contract templates on IDOA's website at <https://www.in.gov/idoa/3000.htm>. Please refer to this site frequently for the most current version of the cloud terms.
- 5) Keep in mind that your agency is ultimately responsible for configuring and managing the cloud services that you contract for. IOT's cloud terms do not absolve you of those responsibilities. Therefore, it is imperative that your agency's responsibilities are clearly defined in the contract and that you understand them.

Please reach out to IOT if you have questions about the cloud terms or your agency's responsibilities. IOT's Chief Technology Officer, Joe Cudby, is the point of contact for cloud contracts. He can be reached at [jcudby@iot.in.gov](mailto:jcudby@iot.in.gov).

## **ZERO DOLLAR CONTRACTS**

A "zero dollar" contract is a contract that does not contain monetary remuneration between the State and the contractor. But it does not necessarily mean that the contractor is not getting paid by someone else. An example of this type of relationship is when a state agency contracts with a vendor who offers testing services to the public and then the members of the public pay the contractor directly for the testing services. A revenue generating contract is another form of a "zero dollar" contract.

This type of contract requires an IDOA approved procurement method, whether by competitive bid, request for proposals/services or special procurement.

## **ZERO-BASED CONTRACTS**

A zero-based contract is a term used to describe certain state contracts that do not have a total remuneration amount established during the contract term. The contractor is paid based on the rates set forth in the contract, but only if the services are requested and performed. This type of contract also requires an IDOA approved procurement method, whether by competitive bid, request for proposals/services or special procurement.

# **STATE CONTRACTING PROCESS**

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## **1. Determining Agreement Type**

### **Contracts**

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

### **Grants**

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

## **MOUs**

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

## **Contract vs. Grant**

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

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

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

The State agency, in essence, acts as a patron of the grantee. As a grantor, the State agency’s purpose is only to assist an intermediary in providing goods or services to an authorized recipient. A grantee is normally free to choose for itself the best means to implement the grant purpose, subject only to the applicable statutes and the terms of the grant agreement. The State agency is typically responsible for setting strict criteria to ensure upfront that the grant recipient is qualified and competent; not infrequently, these criteria are set out in general terms in the enabling legislation.

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

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

An example of the appropriate use of a contract and a grant: A State agency is mandated by statute to administer a program in which Federal funds are passed through to local entities for the provision of day care to disadvantaged mothers. If the State agency wishes to administer that program with its own staff, the document used to pass through the funds to the actual day care providers would be a grant agreement. If the State agency wishes to agree with a company to assist in the administration of that program, an express duty of the State agency itself, a contract would be required. The following form is a convenient checklist the federal government has developed for federal pass-through grants to sub-recipients. It should be consulted and used whenever necessary.

**SUBRECIPIENT AND CONTRACTOR DETERMINATION FORM (SCX-17)**

Entity \_\_\_\_\_ Financial Statement Date \_\_\_\_\_

Completed by \_\_\_\_\_ Date \_\_\_\_\_

Subrecipient/Contractor \_\_\_\_\_

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

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

You should answer all questions for both of the organizations. Each question should be answered either “yes” (Y) or “no” (N). A “yes” answer is indicative of the type of relationship being reviewed. Space is provided for a concise comment if needed. After completing the questionnaire document your conclusion in Part 3. Section references (Sec.) throughout the form are in 2 CFR 200.

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

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

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

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

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

Subrecipient \_\_\_\_\_

Contractor \_\_\_\_\_

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
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## **Contract vs. MOU**

MOUs are used to memorialize agreements between State agencies, and document an arrangement under which two agencies share a responsibility, or where one agency agrees to perform duties on behalf of the other (where the duties could be within the statutory authority of either agency). The subject matter of a MOU may or may not provide for the transfer of funds between or among agencies. The State Budget Agency's Financial Management Circular #2009-2, dated September 21, 2009 sets out the requirements for a MOU ([http://www.in.gov/sba/files/fmc\\_2009-02.pdf](http://www.in.gov/sba/files/fmc_2009-02.pdf)). **For the latest circular, please refer to the SBA website:**

**<http://www.in.gov/sba/2512.htm>**

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

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

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

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

MOUs are required to be signed by all State agencies appointing authorities or designees party to the document. The State Budget Agency requires that MOUs be documented using SCM.

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

## **SBA Circulars Relevant to Contracts or MOU's**

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



## **2. Frequently Asked Questions**

### **What is SCM?**

PeopleSoft's Supplier Contract Management ("SCM") module is the only process approved by IDOA for the electronic development, review, signing and approval of state contracts and grants. The process is secure and reliable; contracts signed electronically using SCM have the same legal effect or enforceability as if they had been signed in ink on paper.

### **SCM seems really confusing; where do I get help?**

You are not expected to work with SCM until you have completed training provided by IDOA. Over 90% of all state agencies have SCM configuration set up in PeopleSoft and have attended an IDOA roll-out session and SCM training in order to create electronic contracts and amendments. IDOA's Electronic Contracting webpage is found at <http://www.in.gov/idoa/3016.htm>. It includes online training as well as user manuals that will guide you through the process. Sign up to receive the SCM Newsflash Updates and get ongoing information and tips regarding SCM.

If you experience difficulties with SCM, please submit a ticket to GMIS.

### **How is an SCM contract different than a paper one?**

There is no legal difference. The contract language will be the same, regardless of what format is used. SCM uses electronic signatures rather than hand written ones. From a procedural perspective, SCM does not use an EDS sheet and there is no EDS number. However, SCM assigns each contract a unique identifying number, and captures the information previously found on the EDS sheet within the SCM program itself.

### **For Paper Contracts:**

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

\*NOTE: An EDS is not used with SCM.

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

### **Do I need to seek competition when selecting a vendor?**

Absolutely. Analysis and discussion of the procurement process and the use of Request for Proposals [RFPs] and bids is beyond the scope of materials covered in this manual. You should become thoroughly familiar with IC 5-22 if there is any question about the type of competition and procurement you should use in pursuing a particular contract. Even Special Procurements, under IC 5-22-10, require documentation and the approval of IDOA's Commissioner. You may request approval from IDOA's Commissioner by filling out the Special Procurement request form available at <http://www.in.gov/idoa/3000.htm>.

### **May I use an out-of-state vendor?**

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

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

### **Can I draft clauses outside of the template boilerplate?**

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

### **What besides the signed contract do I need to submit through the approval process?**

In addition to the **signed** contract, all exhibits, attachments, schedules referenced in the contract must be included when the contract is circulated for approval. If you are submitting an amendment or renewal, you **MUST** include the underlying contract and all of its exhibits and attachments and all previous amendments and the exhibits and attachments to the amendments.

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

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

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

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

### **What is the difference between an amendment and a renewal?**

An amendment changes or adds to the terms or conditions of an existing contract.

A renewal brings **all** the original terms and conditions forward during the renewal term but does not add any additional terms or conditions. Adding additional consideration is not considered a change that requires an amendment so long as there is **no price escalation** to the payment rate. The only exception to this is if the price escalation was previously negotiated and documented in the consideration or renewal clause of the original contract. OAG and IOT-applicable approvals are not required on renewals because all of the previously reviewed and approved terms and conditions continue throughout the renewal term.

If you desire to extend the length of your contract, as well as add new terms or conditions, including any payment rate changes, new statutorily required clauses, (e.g. Employment Eligibility), or revisions to the M-WBE or IVOSB clauses to the contract, you need to use the amendment template. OAG and IOT-applicable approvals are required on all amendments.

### **What is the difference between an amendment and an addendum?**

An amendment changes or adds to the terms or conditions of an existing contract. An addendum is to be attached to a contractor's form contract for purposes of deleting terms to which the state cannot agree and adding the mandatory clauses required in any state contract. *The Contractor must sign our Addendum before the contract can be circulated for state signatures and approvals.*

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

Yes. SCM contains the most recently revised templates. Additionally, you can find templates in MS Word format for contracts, grants, amendments, addendums and contracts with state educational institutions online at <http://www.in.gov/idoa/3000.htm>.

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

IDOA and the OAG serve different functions in the contract approval process. While the OAG reviews contracts for form and legality, IDOA focuses on policy, contract language and procedures,

and business issues. Just because the contract is legal does not mean that underlying transaction is consistent with the State's policies, purchasing procedures, or that it is in the State's best interests.

### **Does IOT need to approve my contract?**

Any contract that includes information technology goods or services must be reviewed by IOT to confirm compatibility with the State's policies, standards and alignment with current IT investment(s). Products that are currently purchased and meet the majority of business requirements shall be the first choice prior to purchasing redundant products.

Examples of contracts needing IOT approval are those for:

- Hardware (desktop/laptop, appliances, phones, printers, copiers etc.)
- Software
- Software as a Service (online database subscriptions)
- Software Licenses and Maintenance Agreements
- Software Application Development
- Website Development
- Database access through the internet
- Data sharing and cabling
- Cloud contracts, such as
- Infrastructure as a Service (IaaS)
- Platform as a Service (PaaS)
- Software as a Service (SaaS)

Cloud contracts have both specific boilerplate terms that are required, as well as cybersecurity requirements in the "Cloud Product and Services" State Standard. IOT's IT Policies, Standards and Guidelines can be found in the following locations:

<http://www.in.gov/iot/architecture>

<https://secure.iot.in.gov/2811.htm>

If you are unsure about whether your contract will require IOT approval, or if you have any other questions, please contact IOT at [iotprocurement@iot.in.gov](mailto:iotprocurement@iot.in.gov) or 317-232-3172.

### **Can I have a contract for more than four years?**

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

### **What do I do when I need to rush a contract through the approval process?**

Approving agencies offer "rush" review of contracts as a courtesy, therefore do not abuse the "rush" process.

**AFTER** your agency has signed the contract, send an e-mail request to [contracts@idoa.in.gov](mailto:contracts@idoa.in.gov), to your **budget analyst**, and to [contracts@atg.in.gov](mailto:contracts@atg.in.gov) identifying the contract number, contractor name and detailing your justification for requesting a rush review. If your contract needs IOT approval, also include their email address [iotprocurement@iot.in.gov](mailto:iotprocurement@iot.in.gov). Please do not send the email until the e-contract has been signed by your agency. Also, please do not have a vendor call approving agencies directly. If you give us advance notice and a reasonable justification, each approving agency will make every effort to accommodate your exigency.

**For those still using paper contracts:** IDOA, SBA, IOT, and OAG are unable to conduct contract reviews

“while you wait,” so please do not show up with a “rush” paper contract and expect to wait while someone reviews it. Additionally, it is the agency’s responsibility to have the paper contract returned to IDOA for scanning and posting on the Indiana Transparency Portal. For more information, see the question “How does the scanning process work” below.

**Can I submit a contract without a vendor signature?**

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

**What if I need to terminate my contract before its expiration?**

IDOA has established a process to assist you when an agency has determined that contract termination is in its best interest. Please use the termination request form at <http://www.in.gov/idoa/files/ContractTerminationRequest.pdf> and submit to [contract\\_termination@idoa.in.gov](mailto:contract_termination@idoa.in.gov) with sufficient time for IDOA’s review and approval before notice of termination is sent to the contractor pursuant to the contract terms.

**A contractor is an individual; should I list he/she/its personal identification number on the EDS sheet?**

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

**What is the policy on approving duplicate originals for paper contracts?**

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

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

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

**How does the scanning process work?**

The State of Indiana has hired an outside vendor to scan all contractual agreements. Once fully executed, the mail courier picks up the contracts from the State’s last signatory (SBA or OAG) and delivers them to the scanning vendor. However if the contract is labeled as a “RUSH”, the agency is responsible for picking up the contract from the last State signatory (SBA or OAG) and forwarding a scanned copy of the contract to IDOA Contracts at [contracts@idoa.in.gov](mailto:contracts@idoa.in.gov) to be posted to the public website. IDOA Contracts **does not** scan contracts.

\*NOTE: This step is not necessary with a RUSH request for a contract in SCM as the entire contracting process is handled electronically.

**How do I keep a “confidential” contract out of the public portal when using SCM?**

After a contract is “dispatched” but before it is “executed” there is an option to mark it confidential/do not post to the portal. Please note, however, it is a VERY rare case that the entire contract would be deemed confidential under the Access to Public Records Act found at IC 5-14-3. Therefore, the agency is charged

with redacting the information then forwarding a scanned copy of the redacted contract to IDOA Contracts at [contracts@idoa.in.gov](mailto:contracts@idoa.in.gov) so IDOA can post the documents to the Indiana Transparency Portal. IDOA Contracts **does not** scan contracts.

### **Can I submit a contract with faxed or stamped signatures?**

\*NOTE: SCM uses electronic signatures, which are deemed to be original.

No. Only paper contracts or grants with original signatures will be approved.

## **3. Drafting the Agreement**

### **A. Professional Services Contract Development – Reminders and Hints**

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

- Make sure you are using the correct template (Contract, Grant, State Educational Institution, Addendum, Amendment, or Renewal). **When new templates are released, DELETE all outdated templates you may have saved on your computer or update the boilerplate clauses based on the 2019 Version.**
- The contractor's duties need to be described fully within the contract itself or in an attached exhibit. All too frequently a contract is rejected (particularly amendments) because the agency has explained the duties in a supplemental document that is not part of the contract itself.
- Consideration must be clearly stated. Most State contracts involve a purchase/procurement of services for monetary consideration. Some contracts are revenue generating for the State. Some contracts require other third parties to pay the vendor for the services performed resulting in no state dollars going to the vendor. No matter the type of contract you are drafting, there should always be some form of consideration included in this section and it should be clearly detailed.
- To assist in the timely review of your contract, it is important that you have all documentation of your procurement method included in Supplemental Documents in SCM. If you are pursuing a special procurement under IC 5-22-10, seek IDOA approval well in advance of contract execution and include the email approval from IDOA with your special procurement request in SCM.
- If the Contractor/Grantee is not an individual, be sure to include the business entity designation that appears in the Secretary of State's listing ("Inc.," "Corp.," "LLC", "LP", etc.) both in the first paragraph of the contract, on the signature page.
- Indiana firms/universities/individuals must be sought to fill the contractual needs of State agencies. If you contract with someone other than an Indiana entity, you will need to explain how you determined that there was no Indiana entity that could fill your needs. Always attach a completed Indiana Economic Impact Statement with your procurement method.
- Include all clauses that will best protect your agency. Feel free to delete the text of clauses that have no relevance to your contract (i.e. using a Key Person clause if there is no key person to the agreement, using order of precedence when there are no other documents to the agreement, etc.) – but keep the paragraph number and subject heading.
- If you are deleting a standard clause, leave the paragraph numbering the same, delete the text, and

state “not applicable” or “deleted by agreement of the parties” (ex. **18. Employment Option** – DELETED BY MUTUAL AGREEMENT OF THE PARTIES or ‘DELETED; NOT APPLICABLE”). Do not delete and renumber the paragraphs or delete the heading and say “deleted”. Reviewers need to easily know what it is you are deleting.

- Make sure dates and payment amounts are consistent. The term of the contract should be consistent with the dates listed, e.g., term of one (1) year, beginning on July 1, 2019, and ending on June 30, 2020, and the payment amounts listed need to add up correctly. Fiscal year does not automatically set contract dates.
- Attachments/exhibits attached to a contract **must** be incorporated by reference in the body of the contract and must be labeled. Make sure information in exhibits, attachments, appendices, etc. is consistent with the contract. No extraneous items should be attached to a contract.
- Mutual Termination for Convenience Clauses are generally unacceptable and will likely result in a rejection of your contract or grant.
- The use of “Executive Letters” or “Change Orders” to change a contractor’s duties or consideration is unacceptable. All changes to a contract must be by mutual agreement and by amendment, signed by all necessary parties, including IDOA, State Budget and OAG. Certain exceptions may be considered if it is determined to be in the best interest of the state.
- SCM does not permit any changes or corrections to an agreement after signatures have been affixed. Therefore, check and double check your document before submitting for vendor signature.
- Fill in all blanks located within your document. If the clause is not needed, delete the clause, but do not leave blanks in your document. Some examples are Notice to Parties and Order of Preference: RFP # \_\_\_\_.
- When filling in the information for the Notice to Parties section, it may be helpful to your agency to include only the title of the person receiving notice, not the name of the individual. In the event of a personnel change in your agency, you will not need to amend the contract with updated contact information.
- When contracting with an individual, sometimes an issue arises as to whether that individual is a true independent contractor or an employee. So, it is a good idea to include a written analysis of the service in relation to the IRS guidelines. See **Independent Contractor Determination** section at page 11 for more information about this determination. This written documentation should be added into SCM under “Modify Supplemental Documents.” It will assist in the approval process.
- The federal government frequently requires certain boilerplate in contracts where the receipt of federal funds is involved. The required boilerplate varies with the source of the funds. This *Manual* does not attempt to address these federal requirements. If your contract will involve federal funds, check with your agency’s legal section or program management to make sure all necessary clauses are included.
- **Do not include instructional language (the text boxes)** when using templates. Please delete them if not applicable.
- Number each page of the contract, preferably “1 of 27,” for example.

- **For paper contracts, all signatures must be in original ink, no signature stamps or copies are accepted.**
- The Non-Collusion Affirmation, required by IC 5-22-16-6, is the final clause before the signature blocks. It must be used on all contracts, grants, addendums, amendments and renewals. Language agreeing to conduct business electronically is inserted automatically as part of the SCM process.
- The signature page of an agreement should be placed after the contract language and before attachments/exhibits. The signature page must be flagged for easy identification by the approving agencies.
- The **AGREEMENT TO USE ELECTRONIC SIGNATURES** is mandatory on all electronic documents signed electronically by the contractor or grantee. Failure to have this paragraph in your document will result in a denial by IDOA.
- Regarding the “signature block” for approving agencies located immediately after the signature lines for the vendor and agency: Please do not delete this block. It offers transparency to the public that IOT, IDOA, SBA and OAG are required approvers and directs them to the electronic documentation of each electronic approver at the end of the document.

## Contract Checklist

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

- Procurement Method.** Documentation of an IDOA approved procurement method must be included in Supplemental Documents, e.g., RFP Award Recommendation Letter, DPAP Solicitation Summary, special procurement request and approval email from IDOA.
- All clearances have been obtained (from DWD, SOS, and DOR, including federal and state suspended vendor lists) and are attached to your contract packet or included in Supplemental Documents within SCM.
- Term**
  - if it lists a number of months and two dates, the number of months must equal the time between the two dates (Ex. 12 months, Jan. 1 to Dec. 31)
  - must include an end date.
- All contract documents are paginated and in order.
- All references in the contract correspond with appropriate clauses and attachments or exhibits.
- Attachments**
  - must be incorporated by reference (please put references in **bold** for ease of reviewing)
  - if referenced, must be attached FOLLOWING the signature page
  - if referenced, must reference proper attachment number
  - if attached, must be referenced
  - all attachments should be labeled in accordance with the references made in the contract
  - if dated, must be dated prior to contract signature dates
- Confidentiality** - if contractor has referenced any additional confidentiality requirements, they must be subject to IC 5-14-3
- Consideration**
  - clear, detailed description of consideration
  - if itemized, items must equal total
  - include rate of pay and any other detail that explains how the vendor will be paid
  - Include total remuneration amount for the term of the contract.
- Copies**
  - if more than one copy of the contract, must have original signature (no faxes or photocopies)
  - if more than one copy of the contract, must have attachments for each copy, if applicable
- Duties** - clear, detailed description of duties either in the body of the Contract or in an incorporated attachment.
- Handwritten changes** - must be initialed by both parties, and must be initialed by parties with the authority to sign contracts
- Math** - does basic math in the contract add up (*i.e.*, per square foot costs, itemized totals)
- SSNs** – must be no social security numbers in contract, attachments, or EDS sheets



- Telephone Privacy clause has been included and has not been modified. (Subsection H in Compliance with Laws—REQUIRED)
- Ethics (Subsection B in Compliance with Laws)—REQUIRED
- Drug-free workplace Certification –REQUIRED for private contractors
- Employment Eligibility Verification (E-Verify) – REQUIRED for private contractors
- Funding Cancellation – REQUIRED by the Budget Agency even when the contractor is paying the State.
- Governing Law – REQUIRED to be Indiana. (If the agreement is with another state or an agency of another state, you may delete by agreement of the parties.)
- Indemnity (Hold Harmless Clause) - *the State can never indemnify the contractor*
- Nondiscrimination Clause – REQUIRED
- Travel - (REQUIRED if travel costs included in contract)
- Boilerplate Affirmation Clause – REQUIRED
- Non-Collusion Statement – REQUIRED
- Signature Page**
  - Contractor and AGENCY Signature
  - Remember to route to IOT for approval, if necessary
  - Agreement to Use Electronic Signatures – REQUIRED for e-signatures by vendor
  - Approving Agencies signature block should not be deleted.

## PROFESSIONAL SERVICES CONTRACT

Contract # \_\_\_\_\_

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

**1. Duties of Contractor.** The Contractor shall provide the following services relative to this Contract:

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

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

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

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

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

**THE FOLLOWING PARAGRAPHS 4 THROUGH 49 ARE DEFINED BY IDOA AS STATE BOILERPLATE CLAUSES. STATE BOILERPLATE CLAUSES SHALL REMAIN UNALTERED AND IN THEIR STANDARD FORM, UNLESS ANY CHANGES OR ALTERATIONS ARE DOCUMENTED AS REQUIRED UNDER PARAGRAPH 50, "BOILERPLATE AFFIRMATION CLAUSE".**

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

**5. Assignment; Successors.**

A. The Contractor binds its successors and assignees to all the terms and conditions of this Contract. 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.

B. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State’s prior written consent. Additionally, the Contractor shall provide prompt written notice to the State of any change in the Contractor’s legal name or legal status so that the changes may be documented and payments to the successor entity may be made.

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

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

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

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

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

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

**9. Changes in Work.** The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. The Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

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

**10. Compliance with Laws.**

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

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

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

Authority to withhold payments is found in IC 4-13-2-14.5 for contractors on the tax warrant list for delinquent taxes. In addition, clearances are required from DOR and DWD before the contract is submitted to the contractor for signature. Any delinquencies will result in the contract being held pending a mutually agreeable resolution.
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D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

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

F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

Governmental entities, general partnerships, and sole proprietorships are not entities described in Title 23 and are not required to register. IC 5-22-16-4 (a) requires foreign corporation must be registered with the secretary of state to do business in Indiana in order to be considered responsible.

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

H. As required by IC § 5-22-3-7:

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

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

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

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

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

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

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

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

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

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

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

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

**1.**

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

**13. Continuity of Services.**

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

- A. The Contractor recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either the State or another contractor, may continue them. The Contractor agrees to:
1. Furnish phase-in training; and
  2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- B. The Contractor shall, upon the State's written notice:
1. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires; and
  2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.
- C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.
- D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

#### **14. Debarment and Suspension.**

- A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.
- B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

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

#### **16. Disputes.**

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

- A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs.
- C. If the parties are unable to resolve a contract dispute between them after good faith attempts to do so, a dissatisfied party shall submit the dispute to the Commissioner of the Indiana Department of Administration for resolution. The dissatisfied party shall give written notice to the Commissioner and the other party. The notice shall include: (1) a description of the disputed issues, (2) the efforts made to resolve the dispute, and (3) a proposed resolution. The Commissioner shall promptly issue a Notice setting out documents and materials to be submitted to the Commissioner in order to resolve the dispute; the Notice may also afford the parties the opportunity to make presentations and enter into further negotiations. Within thirty (30) business days of the conclusion of the final presentations, the Commissioner shall issue a written decision and furnish it to both parties. The Commissioner's decision shall be the final and conclusive administrative decision unless either party serves on the Commissioner and the other party, within ten (10) business days after receipt of the Commissioner's decision, a written request for reconsideration and modification of the written decision. If the Commissioner does not modify the written decision within thirty (30) business days, either party may take such other action helpful to resolving the dispute, including submitting the dispute to an Indiana court of competent jurisdiction. If the parties accept the Commissioner's decision, it may be memorialized as a written Amendment to this Contract if appropriate.
- D. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for the Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.
- E. With the written approval of the Commissioner of the Indiana Department of Administration, the parties may agree to forego the process described in subdivision C. relating to submission of the dispute to the Commissioner.
- F. This paragraph shall not be construed to abrogate provisions of IC § 4-6-2-11 in situations where dispute resolution efforts lead to a compromise of claims in favor of the State as described in that statute. In particular, releases or settlement agreements involving releases of legal claims or potential legal claims of the state should be processed consistent with IC § 4-6-2-11, which requires approval of the Governor and Attorney General.

#### **17. Drug-Free Workplace Certification.**

This clause is required by Executive Order 90-5 and applies to all individuals and private legal entities who receive grants or contracts from State agencies. This clause was modified in 2005 to apply only to Contractor's employees within the State of Indiana. Do not modify, alter or change this clause. A copy of Executive Order 90-5 is available at <http://www.in.gov/idoa/3000.htm>.

As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the

Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

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

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of: (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will: (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

#### **18. Employment Eligibility Verification.**

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

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

- A. The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC § 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.
- B. The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.



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

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

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

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

**21. Funding Cancellation.**

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

As required by Financial Management Circular 2007-1 and IC § 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

**22. Governing Law.**

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

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

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

**24. Indemnification.**

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

The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all third party claims and suits including court costs, attorney’s fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State

will not provide indemnification to the Contractor.

**25. Independent Contractor; Workers' Compensation Insurance.**

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

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

**26. Indiana Veteran Owned Small Business Enterprise Compliance.** Award of this Contract was based, in part, on the Indiana Veteran Owned Small Business Enterprise ("IVOSB") participation plan, as detailed in the IVOSB Subcontractor Commitment Form, commonly referred to as "Attachment A-1" in the procurement documentation and incorporated by reference herein. Therefore, any changes to this information during the Contract term must be approved by IDOA's IVOSB Division ("IVOSB Division") and may require an amendment. It is the State's expectation that the Contractor will meet the subcontractor commitments during the Contract term. The following certified IVOSB subcontractor(s) will be participating in this Contract: **[Add additional IVOSBs using the same format.]**

IVOSB	COMPANY NAME	PHONE	EMAIL OF CONTACT PERSON	PERCENT
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*Briefly describe the IVOSB service(s)/product(s) to be provided under this Contract and include the estimated date(s) for utilization during the Contract term:*

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A copy of each subcontractor agreement must be submitted to the IVOSB Division within thirty (30) days of the effective date of this Contract. The subcontractor agreements may be uploaded into Pay Audit (Indiana's subcontractor payment auditing system), emailed to [IndianaVeteransPreference@idoa.IN.gov](mailto:IndianaVeteransPreference@idoa.IN.gov), or mailed to IDOA, 402 W. Washington Street, Room W-478, Indianapolis, IN 46204. Failure to provide a copy of any subcontractor agreement may be deemed a violation of the rules governing IVOSB procurement and may result in sanctions allowable under 25 IAC 9-5-2. Requests for changes must be submitted to [IndianaVeteransPreference@idoa.IN.gov](mailto:IndianaVeteransPreference@idoa.IN.gov) for review and approval before changing the participation plan submitted in connection with this Contract.

The Contractor shall report payments made to certified IVOSB subcontractors under this Contract on a monthly basis using Pay Audit. The Contractor shall notify subcontractors that they must confirm payments received from the Contractor in Pay Audit. The Pay Audit system can be accessed on the IDOA webpage at: [www.in.gov/idoa/mwbe/payaudit.htm](http://www.in.gov/idoa/mwbe/payaudit.htm). The Contractor may also be required to report IVOSB certified subcontractor payments directly to the IVOSB Division, as reasonably requested and in the format required by the IVOSB Division.

The Contractor's failure to comply with the provisions in this clause may be considered a material breach of the Contract.

## 27. Information Technology Enterprise Architecture Requirements.

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

If this Contract involves information technology-related products or services, the Contractor agrees that any such products or services are compatible with the technology standards, including the assistive technology standard, all found at <https://www.in.gov/iot/2394.htm>. The State may terminate this Contract for default if the terms of this paragraph are breached.

## 28. Insurance.

This clause is not mandatory. However, you may make a business decision that requires insurance provisions. The limits provided here will protect the State up to the tort claims cap found in IC 34-13-3; you may accept lower limits if your business discretion feels the risk is low.

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

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.
2. Automobile liability for owned, non-owned and hired autos with minimum liability limits not less than \$700,000 per person and \$5,000,000 per occurrence. The State is to be named as an additional insured on a primary, non-contributory basis.
3. Errors and Omissions liability with minimum liability limits of \$1,000,000 per claim and in the aggregate. Coverage for the benefit of the State shall continue for a period of two (2) years after the date of service provided under this Contract.
4. Fiduciary liability if the Contractor is responsible for the management and oversight of various employee benefit plans and programs such as pensions, profit-sharing and savings, among others with limits no less than \$700,000 per cause of action and \$5,000,000 in the aggregate.
5. Valuable Papers coverage, if applicable, with an Inland Marine Policy Insurance with limits sufficient to pay for the re-creation and reconstruction of such records.
6. Surety or Fidelity Bond(s) if required by statute or by the agency.
7. Cyber Liability if requested by the State addressing risks associated with electronic transmissions, the internet, networks and informational assets, and having limits of no less than \$700,000 per occurrence and \$5,000,000 in the aggregate.

The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of workers'

compensation coverage meeting all statutory requirements of IC § 22-3-2. In addition, proof of an “all states endorsement” covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.

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

1. The insurer must have a certificate of authority or other appropriate authorization to operate in the state in which the policy was issued.
2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.
4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days’ prior written notice to the undersigned State agency.
5. The Contractor waives and agrees to require their insurer to waive their rights of subrogation against the State of Indiana.

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

**29. Key Person(s).**

This clause should only be included if your agency has identified persons key to the success of the contract. The Key Person should be identified in the Duties section of the contract OR may be included in this section. A Key Person is NOT a State employee; rather it is the employee of the Contractor that you to choose.

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

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

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

Key person(s) to this Contract is/are \_\_\_\_\_

**30. Licensing Standards.** The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations

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

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

**32. Minority and Women’s Business Enterprises Compliance.**

Award of this Contract was based, in part, on the Minority and/or Women’s Business Enterprise (“MBE” and/or “WBE”) participation plan as detailed in the Minority and Women’s Business Enterprises Subcontractor Commitment Form, commonly referred to as “Attachment A” in the procurement documentation and incorporated by reference herein. Therefore, any changes to this information during the Contract term must be approved by MWBE Compliance and may require an amendment. It is the State’s expectation that the Contractor will meet the subcontractor commitments during the Contract term.

The following MBE/WBE Division (“Division”) certified MBE and/or WBE subcontractors will be participating in this Contract: **[Add additional MBEs and WBEs using the same format.]**

MBE or WBE	COMPANY NAME	PHONE	EMAIL OF CONTACT PERSON	PERCENT
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*Briefly describe the MBE and/or WBE service(s)/product(s) to be provided under this Contract and include the estimated date(s) for utilization during the Contract term:*

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A copy of each subcontractor agreement must be submitted to the Division within thirty (30) days of the effective date of this Contract. The subcontractor agreements may be uploaded into Pay Audit (Indiana’s subcontractor payment auditing system), emailed to [MWBECompliance@idoa.IN.gov](mailto:MWBECompliance@idoa.IN.gov), or mailed to MWBE Compliance, 402 W. Washington Street, Indianapolis IN 46204. Failure to provide a copy of any subcontractor agreement may be deemed a violation of the rules governing MBE/WBE procurement and may result in sanctions allowable under 25 IAC 5-7-8. Requests for changes must be submitted to [MWBECompliance@idoa.IN.gov](mailto:MWBECompliance@idoa.IN.gov) for review and approval before changing the participation plan submitted in connection with this Contract.

The Contractor shall report payments made to Division certified subcontractors under this Contract on a monthly basis using Pay Audit. The Contractor shall notify subcontractors that they must confirm payments received from the Contractor in Pay Audit. The Pay Audit system can be accessed on the IDOA webpage at: [www.in.gov/idoa/mwbe/payaudit.htm](http://www.in.gov/idoa/mwbe/payaudit.htm). The Contractor may also be required to report Division certified subcontractor payments directly to the Division, as reasonably requested and in the format required by the Division.

The Contractor’s failure to comply with the provisions in this clause may be considered a material breach of the Contract.

**33. Nondiscrimination.**

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

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

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

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

**34. Notice to Parties.** Whenever any notice, statement or other communication is required under this Contract, it will be sent by E-mail or first class U.S. mail service to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
E-mail: \_\_\_\_\_

B. Notices to the Contractor shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
E-mail: \_\_\_\_\_

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

**35. 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 # \_\_\_\_\_, (4) Contractor's response to RFP # \_\_\_\_\_, and (5) attachments prepared by the Contractor. All attachments, and all documents referred to in this paragraph, are hereby incorporated fully by reference.

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

**36. Ownership of Documents and Materials.**

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

B. Use of the Materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to the Materials developed for or supplied by the State and used to develop or assist in the services provided while the Materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor’s expense. The Contractor shall provide the State full, immediate, and unrestricted access to the Materials and to Contractor’s work product during the term of this Contract.

**37. Payments.**

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

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

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

B. If the Contractor is being paid in advance for the maintenance of equipment, software or a service as a subscription, then pursuant to IC § 4-13-2-20(b)(14), the Contractor agrees that if it fails to fully provide or perform under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

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

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.

**39. 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.

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

**40. Public Record.** The Contractor acknowledges that the State will not treat this Contract as containing confidential information, and will post this Contract on the transparency portal as required by Executive Order 05-07 and IC § 5-14-3.5-2. Use by the public of the information contained in this Contract shall not be considered an act of the State.

**41. Renewal Option.**

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

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

**42. 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.

**43. 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.

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

**45. Termination for Convenience.**

While not mandatory, inclusion of this clause is highly recommended by the Budget Agency.

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

**46. Termination for Default.**

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



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

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

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

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

**47. Travel.** No expenses for travel will be reimbursed unless specifically authorized by this Contract. Permitted expenses will be reimbursed at the rate paid by the State and in accordance with the Budget Agency's *Financial Management Circular – Travel Policies and Procedures* in effect at the time the expenditure is made. Out-of-state travel requests must be reviewed by the State for availability of funds and for conformance with *Circular* guidelines.

**48. Waiver of Rights.** No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract.

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

**50. State Boilerplate Affirmation Clause.** I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's standard contract clauses (as contained in the *2019 OAG/ IDOA Professional Services Contract Manual* or the *2019 SCM Template*) in any way except as follows:

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**Non-Collusion and Acceptance**

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

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

**Agreement to Use Electronic Signatures**

[Applicable only to contracts processed through SCM]

I agree, and it is my intent, to sign this Contract by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Contract to the State of Indiana. I understand that my signing and submitting this Contract in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Contract and this affirmation. I understand and agree that by electronically signing and submitting this Contract in this fashion I am affirming to the truth of the information contained therein. I understand that this Contract will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database:  
[https://hr.gmis.in.gov/psp/pa91prd/EMPLOYEE/EMPL/h/?tab=PAPP\\_GUEST](https://hr.gmis.in.gov/psp/pa91prd/EMPLOYEE/EMPL/h/?tab=PAPP_GUEST)

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

[Contractor]  
By: \_\_\_\_\_

[Indiana Agency]  
By: \_\_\_\_\_

\_\_\_\_\_  
Name and Title, Printed

\_\_\_\_\_  
Name and Title, Printed

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Approved by:**  
Indiana Department of Administration

**Approved by:**  
State Budget Agency

By: \_\_\_\_\_ (for)  
Lesley A. Crane, Commissioner

By: \_\_\_\_\_ (for)  
Zachary Q. Jackson, Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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

\_\_\_\_\_ (for)  
Curtis T. Hill, Jr., Attorney General

Date: \_\_\_\_\_

**Approved by:**  
Indiana Office of Technology

By: \_\_\_\_\_ (for)  
Dewand Neely, Chief Information Officer

Date: \_\_\_\_\_

## **B. Amendment Development - Reminders**

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

1. Amendments **MUST** be numbered in proper consecutive order. SCM will do this automatically.
2. If you are amending the term, original start date does not change, only the ending date. Do not include any statement that purports to change the starting date of the contract/grant term.
3. The original contract/grant being modified, and any amendment(s) previously executed, **MUST** be attached to the amendment document if it is circulated in paper format. Please include a copy of the original EDS sheet for the contract/grant being modified as well as a copy of the EDS sheet(s) for any amendment(s).
4. Please provide justification for why the original contract/grant must be amended (*i.e.* why was the additional work being requested not in the original contract/grant? Is the work covered under the amendment in line with the work described in the original contract/grant?).
5. If you are amending the dollar amount of the original contract/grant, please explain the need for the increase/decrease and any deviation from the original rate of compensation. Without a material change in the type or, in some cases, quantity of work to be performed justifying it, a change in the rate of compensation will not be approved.
6. The amendment signature page must duplicate the signature page of the original contract/grant.
7. **Do not include instructional language (the text boxes)** when using templates.

## Amendment Checklist

- Additional funds**
  - total must match underlying plus amendment
  - if budget exhibit, must be updated to include additional funds
  
- Boilerplate** - if missing from original, has new or updated boilerplate (ex. drug-free workplace, ethics, telephone privacy, payments, information technology architecture, employment eligibility verification)
  
- Copies**
  - if more than one copy of the contract, must have original signature (no faxes or photocopies)
  - if more than one copy of the contract, must have attachments for each copy, if applicable
  
- Math** - does basic math in the contract add up (*i.e.*, per square foot costs, itemized totals, old plus new amounts)
  
- Non-collusion** – should be last paragraph of amendment/renewal
  
- Signature**
  - must be signed prior to end of underlying contract term
  - must be original (no faxes or photocopies)
  
- SSNs** - should be no visible personal social security numbers in contract, attachments, or underlying EDS sheets, contracts, or attachments
  
- Underlying contracts** - all underlying contracts and attachments and amendments should be included in Supplemental Documents folder in SCM

**AMENDMENT #** \_\_\_\_\_  
**Contract #** \_\_\_\_\_

This is an Amendment to the Contract (the "Contract") previously identified as EDS # \_\_\_\_\_  
**[add EDS # if applicable]** entered into by and between the \_\_\_\_\_ (the "State") and \_\_\_\_\_  
(the "Contractor") approved by the last State signatory on \_\_\_\_\_.

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

1. The Contract is hereby extended for an additional period of \_\_\_\_\_. It shall terminate on \_\_\_\_\_.
2. The consideration during this extension period is \_\_\_\_\_. Total remuneration under the Contract is not to exceed \$ \_\_\_\_\_.
3. [Add language regarding any other changes to the Contract, including changes to Exhibits.]
4. The Contract is amended by adding the following:

**A. Minority and Women's Business Enterprises Compliance. *Include one of the options, as applicable; delete the inapplicable option.***

***OPTION 1-to be used if the MBE and/or WBE subcontractor(s) will continue to be utilized during the extension period.***

As required by 25 IAC 5-6-2(b), the following Division certified MBE or WBE subcontractor(s) will be participating in this Contract during the extension period. This participation represents an increase of \_\_\_\_\_ % above the original MBE and/or WBE commitment. **[Add additional MBEs and WBEs using the same format.]**

MBE or WBE	COMPANY NAME	PHONE	EMAIL OF CONTACT PERSON	PERCENT
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*Briefly describe the MBE and/or WBE service(s)/product(s) to be provided under this Amendment and include the estimated date(s) for utilization during the extension period:*

A copy of each subcontractor agreement must be submitted to the Division within thirty (30) days of the effective date of this Amendment. The subcontractor agreements may be uploaded into Pay Audit (Indiana's subcontractor payment auditing system), emailed to [MWBECompliance@idoa.IN.gov](mailto:MWBECompliance@idoa.IN.gov), or mailed to MWBE Compliance, 402 W. Washington Street, Indianapolis IN 46204. Failure to provide a copy of any subcontractor agreement may be deemed a violation of the rules governing MBE/WBE procurement and may result in sanctions allowable under 25 IAC 5-7-8. Requests for changes must be submitted to [MWBECompliance@idoa.IN.gov](mailto:MWBECompliance@idoa.IN.gov) for review and approval before changing the participation plan submitted in connection with this Amendment.

The Contractor shall report payments made to Division certified subcontractors under this Contract on a monthly basis using Pay Audit. The Contractor shall notify subcontractors that they must confirm payments received from Contractor in Pay Audit. The Pay Audit system can be accessed on the IDOA webpage at: [www.in.gov/idoa/mwbe/payaudit.htm](http://www.in.gov/idoa/mwbe/payaudit.htm). Contractor may also be required to report Division certified subcontractor payments directly to the Division, as reasonably requested and in the format required by the Division.

Contractor's failure to comply with the provisions in this clause may be considered a material breach of the Contract.

***OPTION 2 – to be used if the original Contract identified subcontractors in this clause, but the Contractor will not be utilizing the MBE and WBE subcontractors during the extension period.***

No certified MBE or WBE subcontractors will be participating in this Contract during the extension period.

**B. Indiana Veteran Owned Small Business Enterprises Compliance. *Include one of the options, as applicable; delete the inapplicable option.***

***OPTION 1-to be used if the IVOSB subcontractor(s) will continue to be utilized during the extension period.***

As required by 25 IAC 9-4-1(b), the following certified IVOSB subcontractors will be participating in this Contract during the extension period. This participation represents an increase of      % above the original IVOSB commitment. **[Add additional IVOSBs using the same format.]**

IVOSB	COMPANY NAME	PHONE	EMAIL OF CONTACT PERSON	PERCENT
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\_\_\_\_\_  
*Briefly describe the IVOSB service(s)/product(s) to be provided under this Amendment and include the estimated date(s) for utilization during the extension period:*

\_\_\_\_\_  
A copy of each subcontractor agreement must be submitted to IDOA's IVOSB Division within thirty (30) days of the effective date of this Amendment. The subcontractor agreements may be uploaded into Pay Audit (Indiana's subcontractor payment auditing system), emailed to [IndianaVeteransPreference@idoa.IN.gov](mailto:IndianaVeteransPreference@idoa.IN.gov), or mailed to IDOA, 402 W. Washington Street, Room W-478, Indianapolis, IN 46204. Failure to provide a copy of any subcontractor agreement may be deemed a violation of the rules governing IVOSB procurement and may result in sanctions allowable under 25 IAC 9-5-2. Requests for changes must be submitted to [IndianaVeteransPreference@idoa.IN.gov](mailto:IndianaVeteransPreference@idoa.IN.gov) for review and approval before changing the participation plan submitted in connection with this Amendment.

The Contractor shall report payments made to certified IVOSB subcontractors under this Contract on a monthly basis using Pay Audit. The Contractor shall notify subcontractors that they must confirm payments received from Contractor in Pay Audit. The Pay Audit system can be accessed on the IDOA webpage at: [www.in.gov/idoa/mwbe/payaudit.htm](http://www.in.gov/idoa/mwbe/payaudit.htm). The Contractor may also be required to report IVOSB certified subcontractor payments directly to the IVOSB Division, as reasonably requested and in the format required by the IVOSB Division.

The Contractor's failure to comply with the provisions in this clause may be considered a material breach of the Contract.

***OPTION 2 – to be used if the original Contract identified subcontractors in this clause, but the Contractor will not be utilizing the IVOSB subcontractors during the extension period.***

No certified IVOSB subcontractors will be participating in this Contract during the extension period.

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



### Non-Collusion and Acceptance

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

### Agreement to Use Electronic Signatures

#### [Applicable only to Amendments processed through SCM]

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

[https://hr.gmis.in.gov/psp/pa91prd/EMPLOYEE/EMPL/h/?tab=PAPP\\_GUEST](https://hr.gmis.in.gov/psp/pa91prd/EMPLOYEE/EMPL/h/?tab=PAPP_GUEST)

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

[Contractor]

[Indiana Agency]

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Name and Title, Printed

\_\_\_\_\_  
Name and Title, Printed

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Approved by:**  
Indiana Department of Administration

**Approved by:**  
State Budget Agency

By: \_\_\_\_\_ (for)  
Lesley A. Crane, Commissioner

By: \_\_\_\_\_ (for)  
Zachary Q. Jackson, Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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

\_\_\_\_\_ (for)  
Curtis T. Hill, Jr., Attorney General

Date: \_\_\_\_\_

**Approved by:**  
Indiana Office of Technology

By: \_\_\_\_\_ (for)  
Deward Neely, Chief Information Officer

Date: \_\_\_\_\_

### C. Renewal Development - Reminders

Renewals should be used ONLY when your agency would like to continue the same terms and conditions of the original contract for an additional term. See IC 5-22-17-4 and 25 IAC 1.1-1-16(c). **Renewals cannot contain any modifications to the contract.**

If you are adding additional terms or clauses, including new required boilerplate clauses, your extension must be processed as an amendment.

1. An expired contract cannot be renewed.
2. A contract cannot be renewed if there was not a renewal clause in the original contract nor may it be renewed for a term longer than the original term.
3. When you renew the contract, you are bringing all the original terms and conditions forward for another term (i.e. one additional year and \$10,000 more dollars).
4. Renewals must be numbered.
5. A renewal may allow for an increase in payment only if an increase has been provided for in the original contract.
6. The original contract being renewed MUST be included in SCM.
7. The renewal signature page does not require the approval of the Attorney General's Office or the Indiana Office of Technology, **so long as no additional terms have been added to the contract.**
8. If you only need more time on the contract to complete work in progress, you may want to consider an amendment to extend the term.
9. IDOA retains a four (4) year limit on the contract term, including renewals. IDOA is willing to discuss longer terms on a case by case basis.

**RENEWAL  
Contract #**

Pursuant to IC § 5-22-17-4 and the terms of the Contract, \_\_\_\_\_ (the "State") exercises its option to renew its Contract with \_\_\_\_\_ (the "Contractor") under the same terms and conditions of the original Contract.

1. The Contract is hereby renewed for an additional period of \_\_\_\_\_. It shall terminate on \_\_\_\_\_.
2. The consideration during this renewal period is \$ \_\_\_\_\_, which reflects *[a price escalation/no price escalation]* as permitted by the terms of the original Contract. Total remuneration under the Contract is not to exceed \$ \_\_\_\_\_.

**Non-Collusion and Acceptance**

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

**Agreement to Use Electronic Signatures  
[Applicable only to contracts processed through SCM]**

I agree, and it is my intent, to sign this Contract by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Contract to the State of Indiana. I understand that my signing and submitting this Contract in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Contract and this affirmation. I understand and agree that by electronically signing and submitting this Contract in this fashion I am affirming to the truth of the information contained therein. I understand that this Contract will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database:  
[https://hr.gmis.in.gov/psp/pa91prd/EMPLOYEE/EMPL/h/?tab=PAPP\\_GUEST](https://hr.gmis.in.gov/psp/pa91prd/EMPLOYEE/EMPL/h/?tab=PAPP_GUEST)

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

<b>[Contractor]</b>	<b>[State Agency]</b>
By: _____	By: _____
Printed Name: _____	Printed Name: _____
Date: _____	Date: _____
<b>Department of Administration</b>	<b>State Budget Agency</b>
_____ Lesley A. Crane, Commissioner	_____ Zachary Q. Jackson, Director
Date: _____	Date: _____

## D. Addendum Development

### Reminders

- When a contractor insists on using its own standard contract agreement, you should prepare and attach an addendum. The addendum incorporates the State's standard contract provisions. **DO NOT SIGN THE CONTRACTOR'S FORM.** All parties must sign the State's Addendum instead.
- After the Addendum has been circulated for signature and approved by IDOA, IOT, Budget and the OAG, the agency may sign the form contract **if** the Contractor insists. The Addendum will take precedence over the Form Contract.
- The Addendum provides that certain clauses in the Contractor's Form Contract are automatically deleted. Nonetheless, you should carefully read the Form Contract to ensure there are no other unacceptable terms.
- As with the Contract Boilerplate, certain clauses have been designated as **required** and must be included in every addendum. The balance of the clauses is presented for your use and you should include as many as necessary to meet your agency needs. You can delete inapplicable clauses in the Addendum (but keep the heading and the paragraph number so that the reviewers can easily identify what has been deleted).

## ADDENDUM

### Contract #

This Addendum is entered into by and between \_\_\_\_\_ (“the State”) and the entity designated as “the Contractor” below. In consideration of those mutual undertakings and covenants, the parties agree as follows:

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

**Contractor Name:**

**Contractor Address:**

**Title of Form Contract:**

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

- A. Any provision requiring the State of Indiana to provide insurance
- B. Any provision requiring the State of Indiana to provide indemnity
- C. Any provision providing that the Contract be construed in accordance with laws other than those of the State of Indiana
- D. Any provision providing that suit be brought in any state other than Indiana
- E. Any provision providing for resolution of contract disputes
- F. Any provision requiring the State of Indiana to pay any taxes
- G. Any provision requiring the State of Indiana to pay penalties, liquidated damages, interest or attorney’s fees
- H. Any provision modifying the applicable Indiana statute of limitations
- I. Any provision relating to the time within which a claim must be made.
- J. Any provision requiring payment of consideration in advance unless authorized by an exception listed in IC § 4-13-2-20
- K. Any provision limiting disclosure of the contract in violation of the Access to Public Records Act, IC § 5-14-3. This is a Public Contract and will be posted on the transparency portal as required by Executive Order 05-07 and IC § 5-14-3.5-2.
- L. Any provision requiring payment in less than 35 days
- M. Any provision providing for automatic renewal
- N. Any provision giving the Form Contract precedence over this Addendum

**2. Form Contract/Duties of Contractor.** The Contractor shall provide the Services or Products described in the Form Contract. **[You may also include a description of the duties in this Section.]**

**3. Term.** This Contract begins on \_\_\_\_\_ and ends \_\_\_\_\_.

**4. Consideration.** **[Include an explanation of the payment benchmarks for deliverables described in Section 2. Duties of Contractor.]** Total consideration for term of this Contract is \$ \_\_\_\_\_.

**5. Access to Records.** The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall

make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

**6. Assignment; Successors.**

A. The Contractor binds its successors and assignees to all the terms and conditions of this Contract. 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.

B. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State’s prior written consent. Additionally, the Contractor shall provide prompt written notice to the State of any change in the Contractor’s legal name or legal status so that the changes may be documented and payments to the successor entity may be made.

**7. Assignment of Antitrust Claims.**

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

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

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

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

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

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

**10. Changes in Work.**

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

The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. The Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

**11. Compliance with Laws.**

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

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

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

Authority to withhold payments is found in IC 4-13-2-14.5 for contractors on the tax warrant list for delinquent taxes.
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D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

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

F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

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

H. As required by IC § 5-22-3-7:

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



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

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

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

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

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

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

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

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

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

**12. 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.

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

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

#### **14. Continuity of Services.**

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

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

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

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

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

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

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

### **15. Debarment and Suspension.**

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

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

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

### **17. Disputes.**

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

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

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any

additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs.

C. If the parties are unable to resolve a contract dispute between them after good faith attempts to do so, a dissatisfied party shall submit the dispute to the Commissioner of the Indiana Department of Administration for resolution. The dissatisfied party shall give written notice to the Commissioner and the other party. The notice shall include (1) a description of the disputed issues, (2) the efforts made to resolve the dispute, and (3) a proposed resolution. The Commissioner shall promptly issue a Notice setting out documents and materials to be submitted to the Commissioner in order to resolve the dispute; the Notice may also afford the parties the opportunity to make presentations and enter into further negotiations. Within thirty (30) business days of the conclusion of the final presentations, the Commissioner shall issue a written decision and furnish it to both parties. The Commissioner's decision shall be the final and conclusive administrative decision unless either party serves on the Commissioner and the other party, within ten (10) business days after receipt of the Commissioner's decision, a written request for reconsideration and modification of the written decision. If the Commissioner does not modify the written decision within thirty (30) business days, either party may take such other action helpful to resolving the dispute, including submitting the dispute to an Indiana court of competent jurisdiction. If the parties accept the Commissioner's decision, it may be memorialized as a written Amendment to this Contract if appropriate.

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

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

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

#### **18. Drug-Free Workplace Certification.**

This clause is required by Executive Order 90-5 and applies to all individuals and private legal entities who receive grants or contracts from State agencies. This clause was modified in 2005 to apply only to Contractor's employees within the State of Indiana. Do not modify, alter or change this clause. A copy of Executive Order 90-5 is available on the IDOA <http://www.in.gov/idoa/3000.htm>.

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

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

A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's

workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

- B. Establishing a drug-free awareness program to inform its employees of: (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

**19. Employment Eligibility Verification.**

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

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

- A. The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC § 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.
- B. The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.
- C. The Contractor shall require his/her/its subcontractors, who perform work under this Contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

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

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

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

**22. Funding Cancellation.**

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

As required by Financial Management Circular 2007-1 and IC § 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

**23. Governing Law.**

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

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

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

**25. Indemnification.**

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

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

**26. Independent Contractor; Workers’ Compensation Insurance.**

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

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

Contractor's employees, and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.

**27. Indiana Veteran Owned Small Business Enterprise Compliance.** Award of this Contract was based, in part, on the Indiana Veteran Owned Small Business Enterprise ("IVOSB") participation plan, as detailed in the IVOSB Subcontractor Commitment Form, commonly referred to as "Attachment A-1" in the procurement documentation and incorporated by reference herein. Therefore, any changes to this information during the Contract term must be approved by IDOA's IVOSB Division ("IVOSB Division") and may require an amendment. It is the State's expectation that the Contractor will meet the subcontractor commitments during the Contract term. The following certified IVOSB subcontractor(s) will be participating in this Contract: **[Add additional IVOSBs using the same format.]**

IVOSB	COMPANY NAME	PHONE	EMAIL OF CONTACT PERSON	PERCENT
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*Briefly describe the IVOSB service(s)/product(s) to be provided under this Contract and include the estimated date(s) for utilization during the Contract term:*

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A copy of each subcontractor agreement must be submitted to the IVOSB Division within thirty (30) days of the effective date of this Contract. The subcontractor agreements may be uploaded into Pay Audit (Indiana's subcontractor payment auditing system), emailed to [IndianaVeteransPreference@idoa.IN.gov](mailto:IndianaVeteransPreference@idoa.IN.gov), or mailed to IDOA, 402 W. Washington Street, Room W-478, Indianapolis, IN 46204. Failure to provide a copy of any subcontractor agreement may be deemed a violation of the rules governing IVOSB procurement and may result in sanctions allowable under 25 IAC 9-5-2. Requests for changes must be submitted to [IndianaVeteransPreference@idoa.IN.gov](mailto:IndianaVeteransPreference@idoa.IN.gov) for review and approval before changing the participation plan submitted in connection with this Contract.

The Contractor shall report payments made to certified IVOSB subcontractors under this Contract on a monthly basis using Pay Audit. The Contractor shall notify subcontractors that they must confirm payments received from Contractor in Pay Audit. The Pay Audit system can be accessed on the IDOA webpage at: [www.in.gov/idoa/mwbe/payaudit.htm](http://www.in.gov/idoa/mwbe/payaudit.htm). The Contractor may also be required to report IVOSB certified subcontractor payments directly to the IVOSB Division, as reasonably requested and in the format required by the IVOSB Division.

The Contractor's failure to comply with the provisions in this clause may be considered a material breach of the Contract.

**28. Information Technology Enterprise Architecture Requirements.**

Unless there is a waiver approved by the Indiana Office of Technology (IOT), this clause should be used in all contracts having to do with procuring new Information Technology products and services to assure consideration for approval by IOT.
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If this Contract involves information technology-related products or services, the Contractor agrees that any such products or services are compatible with the technology standards, including the assistive technology standard, all found at <https://www.in.gov/iot/2394.htm>. The State may terminate this Contract for default if the terms of this paragraph are breached.

## 29. Insurance.

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

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

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.
2. Automobile liability for owned, non-owned and hired autos with minimum liability limits not less than \$700,000 per person and \$5,000,000 per occurrence. The State is to be named as an additional insured on a primary, non-contributory basis.
3. Errors and Omissions liability with minimum liability limits of \$1,000,000 per claim and in the aggregate. Coverage for the benefit of the State shall continue for a period of two (2) years after the date of service provided under this Contract.
4. Fiduciary liability if the Contractor is responsible for the management and oversight of various employee benefit plans and programs such as pensions, profit-sharing and savings, among others with limits no less than \$700,000 per cause of action and \$5,000,000 in the aggregate.
5. Valuable Papers coverage, if applicable, with an Inland Marine Policy Insurance with limits sufficient to pay for the re-creation and reconstruction of such records.
6. Surety or Fidelity Bond(s) if required by statute or by the agency.
7. Cyber Liability if requested by the State addressing risks associated with electronic transmissions, the internet, networks and informational assets, and having limits of no less than \$700,000 per occurrence and \$5,000,000 in the aggregate.

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

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

1. The insurer must have a certificate of authority or other appropriate authorization to operate in the state in which the policy was issued.
2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.

4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.
  5. The Contractor waives and agrees to require their insurer to waive their rights of subrogation against the State of Indiana.
- C. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Contract.

**30. Key Person(s).**

This clause should only be included if your agency has identified persons key to the success of the contract. The Key Person should be identified in the Duties section of the contract OR may be included in this section. A state employee should not be included as a key person.

- A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, the State shall have the right to terminate this Contract upon thirty (30) days' prior written notice.
- B. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Contractor shall not be permitted without express written consent of the State.

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

Key person(s) to this Contract is/are \_\_\_\_\_

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

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

**33. Minority and Women's Business Enterprises Compliance.** Award of this Contract was based, in part, on the Minority and/or Women's Business Enterprise ("MBE" and/or "WBE") participation plan as detailed in the Minority and Women's Business Enterprises Subcontractor Commitment Form, commonly referred to as "Attachment A" in the procurement documentation and



incorporated by reference herein. Therefore, any changes to this information during the Contract term must be approved by MWBE Compliance and may require an amendment. It is the State's expectation that the Contractor will meet the subcontractor commitments during the Contract term.

The following MBE/WBE Division ("Division") certified MBE and/or WBE subcontractors will be participating in this Contract: **[Add additional MBEs and WBEs using the same format.]**

MBE or WBE	COMPANY NAME	PHONE	EMAIL OF CONTACT PERSON	PERCENT
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*Briefly describe the MBE and/or WBE service(s)/product(s) to be provided under this Contract and include the estimated date(s) for utilization during the Contract term:*

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A copy of each subcontractor agreement must be submitted to the Division within thirty (30) days of the effective date of this Contract. The subcontractor agreements may be uploaded into Pay Audit (Indiana's subcontractor payment auditing system), emailed to [MWBECompliance@idoa.IN.gov](mailto:MWBECompliance@idoa.IN.gov), or mailed to MWBE Compliance, 402 W. Washington Street, Indianapolis IN 46204. Failure to provide a copy of any subcontractor agreement may be deemed a violation of the rules governing MBE/WBE procurement and may result in sanctions allowable under 25 IAC 5-7-8. Requests for changes must be submitted to [MWBECompliance@idoa.IN.gov](mailto:MWBECompliance@idoa.IN.gov) for review and approval before changing the participation plan submitted in connection with this Contract.

The Contractor shall report payments made to Division certified subcontractors under this Contract on a monthly basis using Pay Audit. The Contractor shall notify subcontractors that they must confirm payments received from Contractor in Pay Audit. The Pay Audit system can be accessed on the IDOA webpage at: [www.in.gov/idoa/mwbe/payaudit.htm](http://www.in.gov/idoa/mwbe/payaudit.htm). The Contractor may also be required to report Division certified subcontractor payments directly to the Division, as reasonably requested and in the format required by the Division.

The Contractor's failure to comply with the provisions in this clause may be considered a material breach of this Contract.

### **34. Nondiscrimination.**

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

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

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

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

**35. Notice to Parties.** Whenever any notice, statement or other communication is required under this Contract, it will be sent by E-mail or first class U.S. mail service to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
E-mail: \_\_\_\_\_

B. Notices to the Contractor shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
E-mail: \_\_\_\_\_

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

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

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

Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) this Addendum, (2) the State’s cloud terms, if applicable, (3) the Form Contract, (4) attachments prepared by the State, (5) RFP #\_\_\_\_\_, (6) Contractor’s response to RFP #\_\_\_\_\_, and (7) attachments prepared by the Contractor. All attachments, and all documents referred to in this paragraph, are hereby incorporated fully by reference.

**37. Ownership of Documents and Materials.**

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

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

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

### **38. Payments.**

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

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

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

B. If the Contractor is being paid in advance for the maintenance of equipment, software or a service as a subscription, then pursuant to IC § 4-13-2-20(b)(14), the Contractor agrees that if it fails to fully provide or perform under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

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

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

### **40. Progress Reports.**

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

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

### **41. Public Record.**

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

The Contractor acknowledges that the State will not treat this Contract as containing confidential information, and will post this Contract on the transparency portal as required by Executive Order 05-07 and IC § 5-14-3.5-2. Use by the public of the information contained in this Contract shall not be considered an act of the State.

### **42. Renewal Option.**

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

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

**43. 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.

**44. 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.

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

**46. Termination for Convenience.**

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

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

**47. Termination for Default**

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

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

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

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

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

**48. Travel.** No expenses for travel will be reimbursed unless specifically authorized by this Contract. Permitted expenses will be reimbursed at the rate paid by the State and in accordance with the Budget Agency's *Financial Management Circular – Travel Policies and Procedures* in effect at the time the expenditure is made. Out-of-state travel requests must be reviewed by the State for availability of funds and for conformance with *Circular* guidelines.

**49. Waiver of Rights.** No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract.

**50. 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 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.

**51. State Boilerplate Affirmation Clause.** I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's standard contract clauses (as contained in the *2019 OAG/ IDOA Professional Services Contract Manual* or the *2019 SCM Template*) in any way except as follows:

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

**Non-Collusion and Acceptance**

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

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

**Agreement to Use Electronic Signatures**  
**[Applicable only to contracts processed through SCM]**

I agree, and it is my intent, to sign this Contract by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Contract to the State of Indiana. I understand that my signing and submitting this Contract in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Contract and this affirmation. I understand and agree that by electronically signing and submitting this Contract in this fashion I am affirming to the truth of the information contained therein. I understand that this Contract will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database:  
[https://hr.gmis.in.gov/psp/pa91prd/EMPLOYEE/EMPL/h/?tab=PAPP\\_GUEST](https://hr.gmis.in.gov/psp/pa91prd/EMPLOYEE/EMPL/h/?tab=PAPP_GUEST)

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

[Contractor]  
By: \_\_\_\_\_

[Indiana Agency]  
By: \_\_\_\_\_

\_\_\_\_\_  
Name and Title, Printed

\_\_\_\_\_  
Name and Title, Printed

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Approved by:**  
Indiana Department of Administration

**Approved by:**  
State Budget Agency

By: \_\_\_\_\_ (for)  
Lesley A. Crane, Commissioner

By: \_\_\_\_\_ (for)  
Zachary Q. Jackson, Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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

\_\_\_\_\_ (for)  
Curtis T. Hill, Jr., Attorney General

Date: \_\_\_\_\_

**Approved by:**  
Indiana Office of Technology

By: \_\_\_\_\_ (for)  
Dewand Neely, Chief Information Officer

Date: \_\_\_\_\_

## E. Grant Development

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

### Reminders

- The following pages include Grant Boilerplate language. Only GRANT-SPECIFIC information is included here. Clauses that are mandatory for grants are included in this section. If there were clauses in the Professional Services Contract Boilerplate that would further protect your agency, feel free to include them. In any clause “borrowed” from the contract Boilerplate, please be sure to alter language to read “Grantee” rather than “Contractor.”
- **Do not include instructional language (the text boxes)** when using templates.
- Certain clauses have been designated as required and must be included in every Grant. This includes an order of precedence clause if you incorporate a grant application into the agreement or if a grant application is used to clarify the expectations of the Grantee.
- Please number each page of the contract, preferably “1 of 10,” etc.
- If your agency prepares federal grants, be sure to include clauses required by your federal granting authority.
- Depending on the nature of the grant, consider requiring your grantee to have insurance coverage.



# GRANT AGREEMENT

## Contract #

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

### 1. Purpose of this Grant Agreement; Funding Source.

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

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

### FUNDING SOURCE:

If Federal Funds: Program Name per Catalog of Federal Domestic Assistance (CFDA):

\_\_\_\_\_

CFDA # \_\_\_\_\_

If State Funds: Program Title \_\_\_\_\_

### 2. Representations and Warranties of the Grantee.

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

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

### 3. Implementation of and Reporting on the Project.

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

- A. The Grantee shall implement and complete the Project in accordance with **Exhibit A** and with the plans and specifications contained in its Grant Application, which is on file with the State and is incorporated by reference. Modification of the Project shall require prior written approval of the State.
- B. The Grantee shall submit to the State written progress reports until the completion of the Project. These reports shall be submitted on a [*weekly/monthly/quarterly*] basis and shall contain such detail of progress or performance on the Project as is requested by the State.

#### 4. Term.

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

This Grant Agreement commences on \_\_\_\_\_ and shall remain in effect through \_\_\_\_\_. Unless otherwise provided herein, it may be extended upon the written agreement of the parties and as permitted by state or federal laws governing this Grant.

#### 5. Grant Funding.

- A. The State shall fund this Grant in the amount of \$ \_\_\_\_\_. The approved Project Budget is set forth as **Exhibit B** of this Grant Agreement, attached hereto and incorporated herein. The Grantee shall not spend more than the amount for each line item in the Project Budget without the prior written consent of the State, nor shall the Project costs funded by this Grant Agreement and those funded by any local and/or private share be changed or modified without the prior written consent of the State.
- B. The disbursement of Grant funds to the Grantee shall not be made until all documentary materials required by this Grant Agreement have been received and approved by the State and this Grant Agreement has been fully approved by the State.

#### 6. Payment of Claims.

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

- A. If advance payment of all or a portion of the Grant funds is permitted by statute or regulation, and the State agrees to provide such advance payment, advance payment shall be made only upon submission of a proper claim setting out the intended purposes of those funds. After such funds have been expended, Grantee shall provide State with a reconciliation of those expenditures. Otherwise, all payments shall be made thirty five (35) days in arrears in conformance with State fiscal policies and procedures. As required by IC § 4-13-2-14.8, all payments will be by the direct deposit by electronic funds transfer to the financial institution designated by the Grantee in writing unless a specific waiver has been obtained from the Indiana Auditor of State.
- B. Requests for payment will be processed only upon presentation of a Claim Voucher in the form designated by the State. Such Claim Vouchers must be submitted with the budget expenditure report detailing disbursements of state, local and/or private funds by project budget line items.
- C. The State may require evidence furnished by the Grantee that substantial progress has been made toward completion of the Project prior to making the first payment under this Grant. All payments are subject to the

State's determination that the Grantee's performance to date conforms to the Project as approved, notwithstanding any other provision of this Grant Agreement.

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

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

#### **7. Project Monitoring by the State.**

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

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

- A. whether Project activities are consistent with those set forth in **Exhibit A**, the Grant Application, and the terms and conditions of the Grant Agreement;
- B. the actual expenditure of state, local and/or private funds expended to date on the Project is in conformity with the amounts for each Budget line item as set forth in **Exhibit B** and that unpaid costs have been properly accrued;
- C. that Grantee is making timely progress with the Project, and that its project management, financial management and control systems, procurement systems and methods, and overall performance are in conformance with the requirements set forth in this Grant Agreement and are fully and accurately reflected in Project reports submitted to the State.

#### **8. Compliance with Audit and Reporting Requirements; Maintenance of Records.**

- A. The Grantee shall submit to an audit of funds paid through this Grant Agreement and shall make all books, accounting records and other documents available at all reasonable times during the term of this Grant Agreement and for a period of three (3) years after final payment for inspection by the State or its authorized designee. Copies shall be furnished to the State at no cost
- B. If the Grantee is a "subrecipient" of federal grant funds under 2 C.F.R. 200.330, Grantee shall arrange for a financial and compliance audit that complies with 2 C.F.R. 200.500 *et seq.* if required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements).
- C. If the Grantee is a non-governmental unit, the Grantee shall file the Form E-1 annual financial report required by IC § 5-11-1-4. The E-1 entity annual financial report will be used to determine audit requirements applicable to non-governmental units under IC § 5-11-1-9. Audits required under this section must comply with the State Board of Accounts *Uniform Compliance Guidelines for Examination of Entities Receiving Financial*

Assistance from Governmental Sources, [https://www.in.gov/sboa/files/erfa\\_2016.pdf](https://www.in.gov/sboa/files/erfa_2016.pdf). Guidelines for filing the annual report are included in Exhibit C (Guidelines for Non-governmental Entities).

## 9. Compliance with Laws.

You **MUST** include this clause.

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

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

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

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

D. The Grantee warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Grantee agrees that the State may suspend funding for the Project. If a valid dispute exists as to the Grantee's liability or guilt in any action initiated by the State or its agencies, and the State decides to suspend funding to the Grantee, the Grantee may submit, in writing, a request for review to the Indiana Department of Administration (IDOA). A determination by IDOA shall be binding on the parties. Any disbursements that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest.

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

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

G. As required by IC § 5-22-3-7:

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

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

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

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

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

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

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

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

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

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

#### **10. Debarment and Suspension.**

A. The Grantee certifies by entering into this Grant Agreement that it is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Grant by any federal agency or by any department, agency or political subdivision of the State. The term “principal” for purposes of this Grant Agreement 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 Grantee.

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

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

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

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

- B. Establishing a drug-free awareness program to inform its employees of: (1) the dangers of drug abuse in the workplace; (2) the Grantee's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace; and
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment the employee will: (1) abide by the terms of the statement; and (2) notify the Grantee of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; and
- D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction; and
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

**12. Employment Eligibility Verification.**

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

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

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

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

**13. Funding Cancellation.**

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

As required by Financial Management Circular 2007-1 and IC § 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Grant Agreement, it shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of

performance shall be final and conclusive.

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

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

**16. Insurance.** The Grantee shall maintain insurance with coverages and in such amount as may be required by the State or as provided in its Grant Application.

**17. Nondiscrimination.**

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

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

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

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

**18. Notice to Parties.** Whenever any notice, statement or other communication is required under this Grant, it will be sent by E-mail or first class U.S. mail service to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
E-mail: \_\_\_\_\_

B. Notices to the Grantee shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

E-mail: \_\_\_\_\_

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

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

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

Any inconsistency or ambiguity in this Grant Agreement shall be resolved by giving precedence in the following order: (1) requirements imposed by applicable federal or state law, including those identified in paragraph 22, below, (2) this Grant Agreement, (3) Exhibits prepared by the State, (4) Invitation to Apply for Grant; (5) the Grant Application; and (6) Exhibits prepared by Grantee. All of the foregoing are incorporated fully herein by reference.

**20. Public Record.** The Contractor acknowledges that the State will not treat this Grant as containing confidential information, and will post this Grant on the transparency portal as required by Executive Order 05-07 and IC § 5-14-3.5-2. Use by the public of the information contained in this Grant shall not be considered an act of the State.

**21. Termination for Breach.**

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

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

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

**23. Travel.** No expenses for travel will be reimbursed unless specifically authorized by this Grant.

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

**25. Provision Applicable to Grants with tax-funded State Educational Institutions: “Separateness” of the Parties.** The State acknowledges and agrees that because of the unique nature of State Educational Institutions, the duties and responsibilities of the State Educational Institution in these Standard Conditions for Grants are specific to the department or unit of the State Educational Institution. The existence or status of any one contract or grant between the State and the State Educational Institution shall have no impact on the execution



or performance of any other contract or grant and shall not form the basis for termination of any other contract or grant by either party.

**26. State Boilerplate Affirmation Clause.** I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State’s standard contract clauses (as contained in the 2019 OAG/ IDOA Professional Services Contract Manual or the 2019 SCM Template) in any way except as follows:

\_\_\_\_\_

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

**Non-Collusion, Acceptance**

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

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

**AGREEMENT TO USE ELECTRONIC SIGNATURES**

**(Applicable to only to Grant Agreements processed through SCM)**

I agree, and it is my intent, to sign this Contract by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Contract to the State of Indiana. I understand that my signing and submitting this Contract in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Contract and this affirmation. I understand and agree that by electronically signing and submitting this Contract in this fashion I am affirming to the truth of the information contained therein. I understand that this Contract will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database: [https://hr.gmis.in.gov/psp/pa91prd/EMPLOYEE/EMPL/h/?tab=PAPP\\_GUEST](https://hr.gmis.in.gov/psp/pa91prd/EMPLOYEE/EMPL/h/?tab=PAPP_GUEST)

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

[Grantee]  
By: \_\_\_\_\_

[Indiana Agency]  
By: \_\_\_\_\_

\_\_\_\_\_  
Name and Title, Printed  
Date: \_\_\_\_\_

\_\_\_\_\_  
Name and Title, Printed  
Date: \_\_\_\_\_

**Approved by:**  
Indiana Department of Administration

By: \_\_\_\_\_ (for)  
Lesley A. Crane, Commissioner

Date: \_\_\_\_\_

**Approved by:**  
State Budget Agency

By: \_\_\_\_\_ (for)  
Zachary Q. Jackson, Director

Date: \_\_\_\_\_

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

\_\_\_\_\_ (for)  
Curtis T. Hill, Jr., Attorney General

Date: \_\_\_\_\_

**Approved by:**  
Indiana Office of Technology

By: \_\_\_\_\_ (for)  
Dewand Neely, Chief Information Officer

Date: \_\_\_\_\_

## **EXHIBIT C – Annual Financial Report for Non-governmental Entities**

Guidelines for filing the annual financial report:

- 1) Filing an annual financial report called an Entity Annual Report (E-1) is required by IC 5-11-1-4. This is done through Gateway which is an on-line electronic submission process.
  - a. There is no filing fee to do this.
  - b. This is in addition to the similarly titled Business Entity Report required by the Indiana Secretary of State.
  - c. The E-1 electronic submission site is found at <https://gateway.ifionline.org/login.aspx>
  - d. The Gateway User Guide is found at <https://gateway.ifionline.org/userguides/E1guide>
  - e. The State Board of Accounts may request documentation to support the information presented on the E-1.
  - f. Login credentials for filing the E-1 and-additional information can be obtained using the [notforprofit@sboa.in.gov](mailto:notforprofit@sboa.in.gov) email address.
- 2) A tutorial on completing Form E-1 online is available at [https://www.youtube.com/watch?time\\_continue=87&v=nPpgtPcdUcs](https://www.youtube.com/watch?time_continue=87&v=nPpgtPcdUcs)
- 3) Based on the level of government financial assistance received, an audit may be required by IC 5-11-1-9.

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

**GRANTEE AFFIDAVIT**  
**Employee Eligibility Verification**  
**For a Grant from a State Agency of More than \$1000**

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

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

Grantee Name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## **F. Development of Contract with a State Educational Institution**

This template is to be used when a state agency is contracting with a state educational institution (“SEI”).

According to IC §21-7-13-32 (b), a “state educational institution” refers to the following:

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

**CONTRACT BETWEEN THE STATE AND A  
STATE EDUCATIONAL INSTITUTION**  
**Contract #**

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

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

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

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

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

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

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

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

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

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

**9. Compliance with Laws**

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

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

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

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

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

F. The State Educational Institution warrants that the State Educational Institution and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

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

H. As required by IC §5-22-3-7:

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Use of these materials, other than related to Contract performance by the State Educational Institution, that includes any reference to the State, without the prior written consent of the State, is prohibited. For any purposes outside those contemplated by this Contract, and for which the State's participation will be referenced, the State shall have the right of review and approval of the use, disclosure, and the finished product prior to its publication. All such requests shall be made in writing and delivered to the Agency Head or his/her designee. The State shall have sixty (60) days to review such requests and will respond in writing to the State Educational Institution. If the State has not responded within sixty (60) days, the request will be deemed approved.

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

representative of the input of each party.

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

**12. Debarment and Suspension.**

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

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

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

**14. Disputes**

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

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

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



other action helpful to resolving the dispute, including submitting the dispute to an Indiana court of competent jurisdiction. If the parties accept the Commissioner's decision, it may be memorialized as a written Amendment to this Contract if appropriate.

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

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

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

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

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

**17. Funding Cancellation.** As required by Financial Management Circular 2007-1 and IC § 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

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

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

**20. Independent Contractor; Workers' Compensation Insurance.** The State Educational Institution is performing as an independent entity under this Contract. No part of this Contract shall be construed to

represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The State Educational Institution shall provide all necessary unemployment and workers' compensation insurance for the State Educational Institution's employees, and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.

**21. Indiana Veteran Owned Small Business Enterprise Compliance.** Award of this Contract was based, in part, on the Indiana Veteran Owned Small Business Enterprise ("IVOSB") participation plan, as detailed in the IVOSB Subcontractor Commitment Form, commonly referred to as "Attachment A-1" in the procurement documentation and incorporated by reference herein. Therefore, any changes to this information during the Contract term must be approved by IDOA's IVOSB Division ("IVOSB Division") and may require an amendment. It is the State's expectation that the State Educational Institution will meet the subcontractor commitments during the Contract term. The following certified IVOSB subcontractor(s) will be participating in this Contract: **[Add additional IVOSBs using the same format.]**

IVOSB	COMPANY NAME	PHONE	EMAIL OF CONTACT PERSON	PERCENT
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*Briefly describe the IVOSB service(s)/product(s) to be provided under this Contract and include the estimated date(s) for utilization during the Contract term:*

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A copy of each subcontractor agreement must be submitted to the IVOSB Division within thirty (30) days of the effective date of this Contract. The subcontractor agreements may be uploaded into Pay Audit (Indiana's subcontractor payment auditing system), emailed to [IndianaVeteransPreference@idoa.IN.gov](mailto:IndianaVeteransPreference@idoa.IN.gov), or mailed to IDOA, 402 W. Washington Street, Room W-478, Indianapolis, IN 46204. Failure to provide a copy of any subcontractor agreement may be deemed a violation of the rules governing IVOSB procurement and may result in sanctions allowable under 25 IAC 9-5-2. Requests for changes must be submitted to [IndianaVeteransPreference@idoa.IN.gov](mailto:IndianaVeteransPreference@idoa.IN.gov) for review and approval before changing the participation plan submitted in connection with this Contract.

The State Educational Institution shall report payments made to certified IVOSB subcontractors under this Contract on a monthly basis using Pay Audit. The State Educational Institution shall notify subcontractors that they must confirm payments received from the State Educational Institution in Pay Audit. The Pay Audit system can be accessed on the IDOA webpage at: [www.in.gov/idoa/mwbe/payaudit.htm](http://www.in.gov/idoa/mwbe/payaudit.htm). The State Educational Institution may also be required to report IVOSB certified subcontractor payments directly to the IVOSB Division, as reasonably requested and in the format required by the IVOSB Division.

The State Educational Institution's failure to comply with the provisions in this clause may be considered a material breach of the Contract.

**22. Information Technology Accessibility.** If this Contract involves information technology-related products or services, the State Educational Institution agrees that any such products or services are compatible with the technology standards, including the assistive technology standard, all found at <https://www.in.gov/iot/2394.htm>. The State may terminate this Contract for default if the terms of this paragraph are breached.

**23. Minority and Women’s Business Enterprises Compliance.**

Award of this Contract was based, in part, on the Minority and/or Women’s Business Enterprise (“MBE” and/or “WBE”) participation plan as detailed in the Minority and Women’s Business Enterprises Subcontractor Commitment Form, commonly referred to as “Attachment A” in the procurement documentation and incorporated by reference herein. Therefore, any changes to this information during the Contract term must be approved by MWBE Compliance and may require an amendment. It is the State’s expectation that the State Educational Institution will meet the subcontractor commitments during the Contract term.

The following MBE/WBE Division (“Division”) certified MBE and/or WBE subcontractors will be participating in this Contract: **[Add additional MBEs and WBEs using the same format.]**

MBE or WBE	COMPANY NAME	PHONE	EMAIL OF CONTACT PERSON	PERCENT
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*Briefly describe the MBE and/or WBE service(s)/product(s) to be provided under this Contract and include the estimated date(s) for utilization during the Contract term:*

A copy of each subcontractor agreement must be submitted to the Division within thirty (30) days of the effective date of this Contract. The subcontractor agreements may be uploaded into Pay Audit (Indiana’s subcontractor payment auditing system), emailed to [MWBECompliance@idoa.IN.gov](mailto:MWBECompliance@idoa.IN.gov), or mailed to MWBE Compliance, 402 W. Washington Street, Indianapolis IN 46204. Failure to provide a copy of any subcontractor agreement may be deemed a violation of the rules governing MBE/WBE procurement and may result in sanctions allowable under 25 IAC 5-7-8. Requests for changes must be submitted to [MWBECompliance@idoa.IN.gov](mailto:MWBECompliance@idoa.IN.gov) for review and approval before changing the participation plan submitted in connection with this Contract.

The State Educational Institution shall report payments made to Division certified subcontractors under this Contract on a monthly basis using Pay Audit. The State Educational Institution shall notify subcontractors that they must confirm payments received from the State Educational Institution in Pay Audit. The Pay Audit system can be accessed on the IDOA webpage at: [www.in.gov/idoa/mwbe/payaudit.htm](http://www.in.gov/idoa/mwbe/payaudit.htm). The State Educational Institution may also be required to report Division certified subcontractor payments directly to the Division, as reasonably requested and in the format required by the Division.

The State Educational Institution’s failure to comply with the provisions in this clause may be considered a material breach of the Contract.

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

and any applicant or employee of the State Educational Institution or any subcontractor.

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

**25. Notice to Parties.** Whenever any notice, statement or other communication is required under this Contract, it will be sent by E-mail or first class U.S. mail service to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

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B. Notices to the State Educational Institution shall be sent to:

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

**26. Payments.** All payments shall be made thirty five (35) days in arrears in conformance with State fiscal policies and procedures and, as required by IC § 4-13-2-14.8, the direct deposit by electronic funds transfer to the State Educational Institution in writing. 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.

**27. 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 not be longer than the term of the original Contract.

**28. 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.

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

**30. Termination for Convenience.** This Contract may be terminated, in whole or in part, by the State, which shall include and is not limited to IDOA and the State Budget Agency whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the State Educational Institution 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 State Educational Institution 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 State Educational Institution shall be compensated for services herein provided but in no case

shall total payment made to the State Educational Institution exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that IDOA shall be deemed to be a party to this Contract with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.

**31. Termination for Default.**

- A. With the provision of thirty (30) days’ notice to the State Educational Institution, the State may terminate this Contract in whole or in part if the State Educational Institution fails to:
  - 1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
  - 2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
  - 3. Make progress so as to endanger performance of this Contract; or
  - 4. Perform any of the other provisions of this Contract.
  
- B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the State Educational Institution will be liable to the State for any excess costs for those supplies or services. However, the State Educational Institution shall continue the work not terminated.
  
- C. The State shall pay the contract price for completed supplies delivered and services accepted. The State Educational Institution 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.

**32. Travel.** No expenses for travel will be reimbursed unless specifically authorized by this Contract. Permitted expenses will be reimbursed at the rate paid by the State and in accordance with the Budget Agency’s *Financial Management Circular – Travel Policies and Procedures* in effect at the time the expenditure is made. Out-of-state travel requests must be reviewed by the State for availability of funds and for conformance with *Circular* guidelines.

**33. 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

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

**35. State Boilerplate Affirmation Clause.** The State Educational Institution affirms under the penalties of perjury that it has not altered, modified, changed or deleted the State’s standard contract clauses (as contained in the *2019 OAG/ IDOA Professional Services Contract Manual* or the *2019 SCM Template*) in any way except as follows:

Identify by paragraph and subject matter each paragraph of the State Boilerplate that is modified or deleted.
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**Non-Collusion and Acceptance**

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

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

**Agreement to Use Electronic Signatures**  
**[Applicable only to contracts processed through SCM]**

I agree, and it is my intent, to sign this Contract by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Contract to the State of Indiana. I understand that my signing and submitting this Contract in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Contract and this affirmation. I understand and agree that by electronically signing and submitting this Contract in this fashion I am affirming to the truth of the information contained therein. I understand that this Contract will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database:  
[https://hr.gmis.in.gov/psp/pa91prd/EMPLOYEE/EMPL/h/?tab=PAPP\\_GUEST](https://hr.gmis.in.gov/psp/pa91prd/EMPLOYEE/EMPL/h/?tab=PAPP_GUEST)

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

[State Educational Institution]

[Indiana Agency]

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Name and Title, Printed

\_\_\_\_\_  
Name and Title, Printed

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Approved by:**  
Indiana Department of Administration

**Approved by:**  
State Budget Agency

By: \_\_\_\_\_ (for)  
Lesley A. Crane, Commissioner

By: \_\_\_\_\_ (for)  
Zachary Q. Jackson, Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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

\_\_\_\_\_ (for)  
Curtis T. Hill, Jr., Attorney General

Date:

**Approved by:**  
Indiana Office of Technology

By: \_\_\_\_\_ (for)  
Deward Neely, Chief Information Officer

Date: \_\_\_\_\_

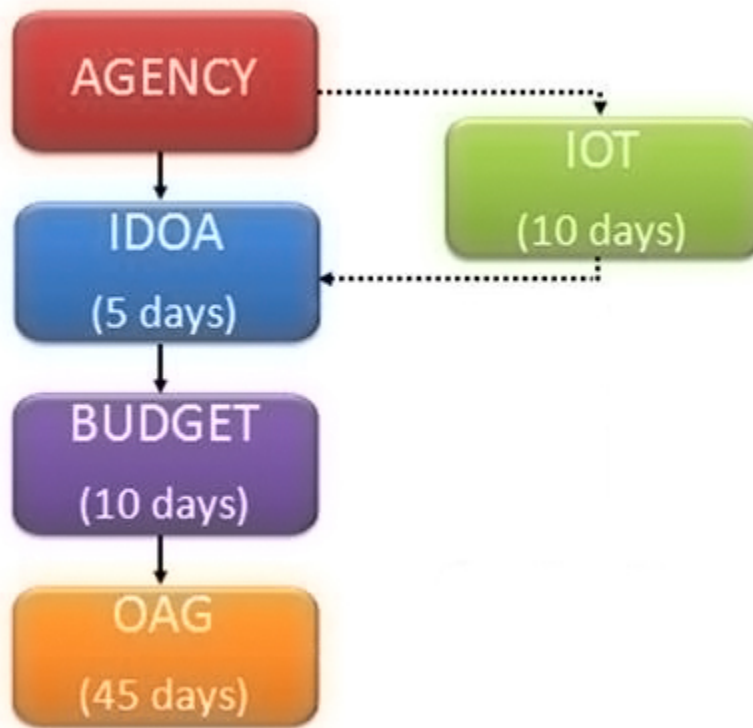
## 4. REMINDERS:

### A. Contractor or Grantee Signature

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

### B. Agency Signature

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



### C. Contract Approval Process

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

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



within 14 business days of receipt.

Please follow the instructions in the most recently updated version of the SCM Manual when routing an electronic contract through the approval process.

## (1.) IOT Approval

Any contract that includes information technology goods or services must be reviewed by the Indiana Office of Technology (“IOT”) to confirm compatibility with the State’s Policy, Standards and alignment to current IT investment(s). Products that are currently purchased and meet the majority of business requirements shall be the first choice prior to purchasing redundant products. Examples of goods and services are:

- Hardware (desktop/laptop, appliances, phones, printers, etc.)
- Software
- Software Licenses and Maintenance Agreements
- Software Application Development
- Website Development
- Database Access through the inter
- Data sharing and cabling
- Cloud contracts, such as
  - Infrastructure as a Service (IaaS)
  - Platform as a Service (PaaS)
  - Software as a Service (SaaS)

Cloud contracts have both specific boilerplate terms that are required, as well as cybersecurity requirements in the “Cloud Product and Services” State Standard. IOT’s IT Policies, Standards and Guidelines can be found in the following locations:

<http://www.in.gov/iot/architecture>  
<https://secure.iot.in.gov/2811.htm>

If you are unsure about whether your contract will require IOT approval or if you have any other questions, please contact IOT at [iotprocurement@iot.in.gov](mailto:iotprocurement@iot.in.gov) or 317-232-3172.

## (2.) IDOA Approval

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

1. Is the correct template being used for the agreement?
2. Was the proper procurement/solicitation procedure used?
3. Is the procurement/solicitation documentation included in Supplemental Documents?
4. Is the contract or amendment term within the four-year maximum? If not, has IDOA approved the extension?
5. Are the deliverables clearly defined?
6. Is the agreement in the best interest of the State?
7. Are all exhibits or attachments referenced in the contract attached to the contract in order?
8. Are the financial interests of the State and the rights of the contractor protected?
9. Are the required boilerplate clauses present?
10. Is the contractor properly registered with the Secretary of State?

11. Have all of the required vendor clearances been conducted and are they included in Supplemental Documents within SCM?
12. Are contractor's and the agency's signatures affixed to the document?

### **(3.) Budget Approval**

Budget is required by Indiana Code § 4-12-1-13(d) and Indiana Code § 4-13-2-14.1(a) to review and approve contracts related to the operation and administration of state programs and offices. Budget reviews contracts to determine the financial impact of the contract to the agency. Further, Budget checks to determine whether budget related required terms are included (e.g. the "Funding Cancellation" clause required by IC 5-22-17-5 and FMC 2007-1). Finally, SBA considers the policy issues in regards to the budget (e.g. substantial spending with an out of state vendor or unnecessary purchases or contracts).

### **(4.) Attorney General Approval**

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

Contract reviews are done by Deputy Attorneys General assigned to the Advisory Division of the office. Form and legality review ensures the contract contains not only the elements necessary to make the agreement binding on the parties, but also complies with law. The review includes the following:

1. Confirming that all state required clauses are present and that the contract does not contain clauses that violate state law.
2. Checking for ambiguities or inconsistencies that may give rise to litigation (*i.e.*, missing or mislabeled exhibits / attachments).
3. Ensures that the correct form has been used (*i.e.*, using the grant form when the agreement is a contract).
4. Checking to make sure that the contract signature process has been followed.

If the OAG finds a contract does not meet form and legality requirements, the contract must be disapproved in writing, with an explanation of how it is legally defective, and advice on how to make it compliant. The same statute gives the OAG up to 45 days to conduct this review.

## **D. Office of the Attorney General (OAG) Review for Form and Legality**

### **(1.) FAQs Regarding Deletion and Modification of Certain Clauses**

**Q: Can I delete provisions from the Compliance with Laws clause at the request of a vendor?**

**A:** In general, all of these provisions should be left in and should not be modified. Certain provisions may be modified in consultation with your agency's legal counsel. However, Subsection B (Ethics) is typically required in all contracts and should not be modified; further, Subsection H (Telephone Solicitation) is required in every contract that involves the use of governmental funds.

If an agency has a contract that does not involve the use of governmental funds and the agency wishes to delete the telephone solicitation clause, the OAG recommends that the agency note the deletion using the following language: "H. Deleted. Contract does not involve the use of governmental funds."

**Q: Can I delete or modify the E-verify clause?**

**A:** This clause is required and cannot be modified in any contract that involves the procurement of services. If agency has a contract that does not involve services, it may modify or delete this clause in consultation with the agency’s legal counsel. If the clause is deleted or modified, the OAG recommends adding the following language to the contract: “18. Employment Eligibility Verification. Deleted. Contract does not involve the procurement of services as noted in Indiana Code § 22-5-1.7-6.”

**Q: What modifications can my agency make to the indemnification clause?**

**A:** State agencies may never include a clause that provides that the State will indemnify the contractor. However, agencies may, in consultation with agency legal counsel, determine the appropriate scope and type of indemnification that a contractor will provide the State in a contract (or make the decision to delete the Contractor’s indemnity obligations). Agencies should carefully weigh the risks involved when determining the extent of a contractor’s indemnity obligation. Agencies can contact IDOA and the OAG for assistance after the agencies have conducted a risk analysis and drafted up preliminary language for consideration.

**Q: Can I delete or modify the Nondiscrimination clause?**

**A:** You must include this clause, and it cannot be modified.

**Q: The contractor wants our agency to add language to Clause 12 (Confidentiality of State Information) stating that the Contractor’s records, data, etc., are confidential. Can we do that?**

**A:** Agencies need to be careful in adding language like this to contracts. If, after consultation with agency legal counsel, an agency decides to add language like this into a contract, agencies should ensure that the language notes that such confidentiality determinations will be made in consultation with the provisions of the Indiana Access to Public Records Act (APRA). Furthermore, contractors may not add language providing that the contract itself is confidential.

**Q: Can I modify the Insurance clause?**

**A:** Modification of the Insurance requirements should be made in consultation with your agency’s legal counsel after careful consideration of the services being provided by the contractor and/or its subcontractors and potential risks that may result in liability to the state. The liability limitations set forth in the boilerplate Insurance clause are based on the Indiana Tort Claims Act, IC 34-13-3.

IC 4-13-1-17(a) prohibits a state agency from purchasing insurance to cover loss or damage to property, except as provided in IC 4-13-1-17(b).

**Q: What other clauses are considered required in every contract?**

**A:** In addition to the clauses that are discussed in this section, agencies should ensure that contracts also include the Drug-Free Workplace Certification (Clause 17); Funding Cancellation (Clause 21); Governing Law (Clause 22); Payments (Clause 36, Subsection A); Penalties/Interest/Attorney’s Fees (Clause 37); Public Record (Clause 39); and Taxes (Clause 43).

## **(2.) Outside Counsel**

### **(a) Consent to Hire Outside Counsel**

#### **Statutory Authority for Consent to Hire Outside Counsel:**

- IC 4-6-5-3 provides that no agency, except as provided by this chapter, shall have the right to name, appoint, employ, or hire any attorney or special or general counsel to represent it or perform any legal service on behalf of such agency and the state without the written consent of the Attorney General.
- IC 4-6-2-11 provides that no claim in favor of the state shall be compromised without the approval of the governor and Attorney General, and such officers are hereby empowered to make such compromise when, in their judgment, it is the interest of the state so to do. This authority will not be delegated by the Attorney General.

There are various statutory exemptions giving an agency authority to hire its own outside counsel. Please consult the Indiana Code when in doubt.

- The OAG requires that all outside counsel requests be submitted through an online form, available at <http://apps.atg.in.gov/atginterapps/outsidecounselrequestform.aspx>.
- After consent to hire outside counsel has been received, a state contract must be executed. The Outside Counsel Contract Template is available at <http://www.in.gov/idoa/files/Outside%20Counsel%20Contract%20Template%202017.doc>. Do not sign a letter of engagement. Please contact the Attorney General's office if this situation arises.
- An amendment to an Outside Counsel Contract requires prior approval from the Attorney General. Requests must be submitted to the Attorney General. A new consent letter will be issued for each amendment. A contract amendment must be executed following consent and should include the consent letter as an exhibit to the amendment.

### **(b) Consent to Hire Outside Counsel on a Contingency Fee Basis**

- IC 4-6-3-2.5 establishes the procedures that an agency must follow to enter a contingency fee agreement. The agency must make a written determination that contingency fee representation is cost effective and in the public interest. This determination is included in OAG's online request form to hire outside counsel.
- Contingency fee agreements are required to be approved by the Inspector General **before** being signed by the agency and the attorney. The OAG must approve the final contract after it is approved by the Inspector General, IDOA and Budget.

## **(3.) Form Approval**

### **Form Approval and Pre-Review - Frequently Asked Questions**

**What is the difference Between a Form Approval and a Pre-Reviewed Contract?** A form approval is a template form which may be used by an agency for one year from the date of approval. Contracts

and Grants entered into within that year using the approved form do not have to be reviewed by the Attorney General for form and legality. No changes can be made to the approved form other than filling in the template blanks.

A pre-reviewed contract typically involves an out-of-the ordinary situation where the agency wants to make sure that once the contract is signed by the agency and the vendor, it will not be rejected by the OAG on a legality issue. A Deputy Attorney General (“DAG”) in the Advisory Division will pre-review drafts and make suggestions so that when the contract is submitted for final approval, it will not be rejected, assuming all suggested legal changes are incorporated.

**What are the advantages in using form approval?** Use of form approved contracts or grants has the advantage of speeding up the contract approval process and providing the contracting state entity with a consistent legal document that is lawful as to form and content. The form approved contract or grant is intended for use when a contracting state entity anticipates a number of contracts or grants for the same purpose/services with different contractors or grantees. Once form approval is obtained, the individual contracts using the approved form do not have to be reviewed and signed by the OAG. Eliminating the OAG from the contract signature process potentially saves up to 45 days in the approval process since by state statute the OAG has 45 days to review contracts.

**How to do I submit a contract for form approval?** In order to seek form approval for a contract or grant, you must fill out the form approval request form found at [http://www.in.gov/idoa/files/Form\\_1028\\_Form\\_Approval\\_Request\\_Sheet.DOCX](http://www.in.gov/idoa/files/Form_1028_Form_Approval_Request_Sheet.DOCX) and submit the completed form and a Microsoft Office **Word** document containing your contract to the Attorney General at [contracts@atg.in.gov](mailto:contracts@atg.in.gov).

### **Requirements for Form Approval**

**Form Approval Automatic Denials.** As a matter of policy, the OAG will not give form approval for contracts when the Department of Administration has delegated approval and signature authority to the agency that generated the contract.

#### ***Form Approval Request Sheet***

A Form Approval Request Sheet must be submitted with all requests for form approval. The completed form must be signed by legal counsel for the agency. **You must submit one request sheet per contract.** A completed form is considered “signed” if e-mailed by anyone from the agency as a .pdf file with an actual or electronic signature from legal counsel; otherwise, the form must have legal counsel’s name typed in and the e-mail must originate from counsel’s e-mail account. ***If you intend to use mail merge for these contracts you must*** indicate this on the request form when submitting the contract for review.

#### ***Form Approval Contract Submission***

**Statutory Authority.** The contracting entity’s statutory authority for the contract must be included on the request form. The OAG also strongly encourages referencing the statutory authority in the body of the contract. **Example (DO NOT USE this as your statutory authority):** “*This grant is authorized by IC 5-19-1, IC 4-23-7.1 and other laws pertaining to local library systems. Grants will be made to libraries eligible to receive funds under the Library and Services Technology Act, 20 U.S.C. §§ 9121 to 9123.*”

It is the agency’s responsibility to stay apprised of any state or federal law affecting the contract and must notify the OAG immediately regarding a change of law. A change of law immediately invalidates the form approval status and the form should be resubmitted. This does not mean fully executed contracts

based on the form become invalid; it means the form must be resubmitted for form approval to continue to use that process.

**State Boilerplate.** A draft of the contract that you are submitting for form approval must be submitted electronically in Microsoft Word format along with the request form. The OAG strongly encourages contracting entities to use the state’s standard boilerplate clauses when drafting contract documents.

**Prepared By Statement.** In order to identify the creator of form approved contracts, a *prepared by* statement is required on the document. This will also satisfy the requirement for instruments that may be received for recording or filing under IC 36-2-11-15. This statement must appear at the bottom of the signature page of the contract.

In addition, an initial block should follow the *prepared by* statement. This is verification that each form approved contract has actually been reviewed by the agency legal counsel before execution. In this way, agency legal counsel ensures the initial and final integrity of the contract. For example, “*This Contract was prepared by agency legal counsel \_\_\_\_\_ on \_\_\_\_\_.*”

**Expedited Requests.** Please allow 30 days for review. We cannot guarantee all expedited requests will be granted. Any requests for expedited review must include the effective date of the contract and the reason for expedited review.

**Formatting.** Please follow the format used in the *Professional Services Contract Manual* to the maximum extent possible. All attachments should be labeled in alphabetical order beginning with A (*i.e.*, **Exhibit A, Exhibit B, Exhibit C**).

**Approval Letter.** Contracts that have received form approval will have the following statement in place of the regular Attorney General signature block: “*Form approval has been granted by the Office of the Attorney General pursuant to IC 4-13-2-14.3(e) on (approval date).*” The OAG will send a letter via e-mail to the person who requested the form. In addition, IDOA will be provided with copies of all form approvals to help monitor the integrity of the process.

**Loading the Form-approved template into SCM.** It is the agency’s responsibility have the form-approved template loaded.

**Destruction of Old Forms.** The OAG strongly encourages the agency legal counsel or contact person and all contract writers to destroy all electronic copies of old forms upon receipt of final approval of the new form contract.

**Effective/Expiration Date.** The form is approved for use as of the date of the letter. Approval expires exactly one year from that date. **Note: amendments of contracts with outside counsel must be approved by OAG for the amendment period. However, new contracts cannot be generated using that form after the expiration date.**

**Name of Form Approved/Pre-Reviewed Contract.** The OAG, for clarity, will assign a name and number to the form approved contract. When corresponding with the OAG or attempting to renew the form, please use this name and number.

***Contracts that are form approved must still follow the regular state signature process, except they are not submitted to the OAG for signature.***

### *Use of Form Approved Contracts or Grants*

**Changes to Form.** Contracts or Grants that have been form approved will be in a template format. This document will have blank spaces for the contractor/grantee name, term, duties, etc. Only the blank spaces may be modified (referred to as a “filled-in form”). In addition, if an individual identified in the signature blocks changes (i.e., the Commissioner of IDOA or the State Budget Director, the identity of the new individual may be substituted without re-submitting the form for approval. **Any other changes to the document are not permitted.** If any new contract provisions become required during the term of the form approval or if the contracting entity determines that other changes are needed in the contract document, the revised form **must be resubmitted** to the OAG for approval. The contracting entity cannot simply change or add language to a previously approved form and continue using the form.

The OAG may also notify agencies that approved forms may need to be re-submitted for approval if there is a change in law of general applicability that needs to be accommodated.

We recognize that situations may arise where a contract needs to be approved by a certain date and it was impossible for the agency to have begun the process far enough in advance to allow for the normal approval process time period. In these cases, we provide, as a courtesy, rush approval of contracts. We remind you that this is only a courtesy and our offices are not required to provide rush approval. Therefore, do not abuse the rush process.

## Citation List

Subject	Statute	Site
Accessibility Standards	IC 4-13.1-3-1	<a href="http://iga.in.gov/legislative/laws/2019/ic/titles/004/#4-13.1-3">http://iga.in.gov/legislative/laws/2019/ic/titles/004/#4-13.1-3</a> -
Advance Payments	IC 4-13-2-20	<a href="http://iga.in.gov/legislative/laws/2019/ic/titles/004/#4-13-2-20">http://iga.in.gov/legislative/laws/2019/ic/titles/004/#4-13-2-20</a>
Contingency Fee Legal Services	IC 4-6-3-2.5	<a href="http://iga.in.gov/legislative/laws/2019/ic/titles/004/#4-6-3-2.5">http://iga.in.gov/legislative/laws/2019/ic/titles/004/#4-6-3-2.5</a>
Contract Approvals	IC 4-13-2-14.1	<a href="http://iga.in.gov/legislative/laws/2019/ic/titles/004/#4-13-2-14.1">http://iga.in.gov/legislative/laws/2019/ic/titles/004/#4-13-2-14.1</a>
Employment Eligibility Verification	IC 22-5-1.7	<a href="http://iga.in.gov/legislative/laws/2019/ic/titles/022/#22-5-1.7">http://iga.in.gov/legislative/laws/2019/ic/titles/022/#22-5-1.7</a>
FMC 98-2		<a href="http://www.in.gov/sba/files/fmc_98-2.pdf">http://www.in.gov/sba/files/fmc_98-2.pdf</a>
Funding Cancellation	IC 5-22-17-5 FMC 2007-1	<a href="http://iga.in.gov/legislative/laws/2019/ic/titles/005/#5-22-17-5">http://iga.in.gov/legislative/laws/2019/ic/titles/005/#5-22-17-5</a> <a href="http://www.in.gov/sba/files/fmc_2007-1.pdf">http://www.in.gov/sba/files/fmc_2007-1.pdf</a>
Governing Laws	IC 34-13-2-3	<a href="http://iga.in.gov/legislative/laws/2019/ic/titles/034/#34-13-2-3">http://iga.in.gov/legislative/laws/2019/ic/titles/034/#34-13-2-3</a>
Indemnity Prohibition	Ind. Const. Art. 10, § 3	<a href="https://iga.in.gov/legislative/laws/const/#document-article-10">https://iga.in.gov/legislative/laws/const/#document-article-10</a>
Insurance Limits	IC 34-13-3-4	<a href="http://iga.in.gov/legislative/laws/2019/ic/titles/034/#34-13-3-4">http://iga.in.gov/legislative/laws/2019/ic/titles/034/#34-13-3-4</a>
Insurance Prohibition	IC 4-13-1-17	<a href="http://iga.in.gov/legislative/laws/2019/ic/titles/004/#4-13-1-17">http://iga.in.gov/legislative/laws/2019/ic/titles/004/#4-13-1-17</a>
Investment in Iran	IC 5-22-16.5	<a href="http://iga.in.gov/legislative/laws/2019/ic/titles/005/#5-22-16.5">http://iga.in.gov/legislative/laws/2019/ic/titles/005/#5-22-16.5</a>
Non-collusion	IC 5-22-16-6	<a href="http://iga.in.gov/legislative/laws/2019/ic/titles/005/#5-22-16-6">http://iga.in.gov/legislative/laws/2019/ic/titles/005/#5-22-16-6</a>
Nondiscrimination	IC 22-9-1-10	<a href="http://iga.in.gov/legislative/laws/2019/ic/titles/022/#22-9-1-10">http://iga.in.gov/legislative/laws/2019/ic/titles/022/#22-9-1-10</a>
Payments	IC 4-13-2-14.8	<a href="http://iga.in.gov/legislative/laws/2019/ic/titles/004/#4-13-2-14.8">http://iga.in.gov/legislative/laws/2019/ic/titles/004/#4-13-2-14.8</a>
“Prepared by” Statement	IC 36-2-11-15	<a href="http://iga.in.gov/legislative/laws/2019/ic/titles/036/#36-2-11-15">http://iga.in.gov/legislative/laws/2019/ic/titles/036/#36-2-11-15</a>
Prompt Payment/Interest	IC 5-17-5-1	<a href="http://iga.in.gov/legislative/laws/2019/ic/titles/005/#5-17-5-1">http://iga.in.gov/legislative/laws/2019/ic/titles/005/#5-17-5-1</a>
Renewal	IC 5-22-17-4 25 IAC 1.1-1-16(c)	<a href="http://iga.in.gov/legislative/laws/2019/ic/titles/005/#5-22-17-4">http://iga.in.gov/legislative/laws/2019/ic/titles/005/#5-22-17-4</a> <a href="http://iac.iga.in.gov/iac/T00250/A00011.PDF?">http://iac.iga.in.gov/iac/T00250/A00011.PDF?</a>
Review for Form and Legality	IC 4-13-2-14.3 IC 4-13-2-14.1	<a href="http://iga.in.gov/legislative/laws/2019/ic/titles/004/#4-13-2-14.3">http://iga.in.gov/legislative/laws/2019/ic/titles/004/#4-13-2-14.3</a> <a href="http://iga.in.gov/legislative/laws/2019/ic/titles/004/#4-13-2-14.1">http://iga.in.gov/legislative/laws/2019/ic/titles/004/#4-13-2-14.1</a>
Social Security Disclosure	IC 4-1-10 IC 4-1-11 10 IAC 5	<a href="http://iga.in.gov/legislative/laws/2019/ic/titles/004/#4-1-10">http://iga.in.gov/legislative/laws/2019/ic/titles/004/#4-1-10</a> <a href="http://iga.in.gov/legislative/laws/2019/ic/titles/004/#4-1-11">http://iga.in.gov/legislative/laws/2019/ic/titles/004/#4-1-11</a> <a href="http://iac.iga.in.gov/iac/T00100/A00050.PDF?">http://iac.iga.in.gov/iac/T00100/A00050.PDF?</a>
Telephone Privacy	IC 5-22-3-7	<a href="http://iga.in.gov/legislative/laws/2019/ic/titles/005/#5-22-3-7">http://iga.in.gov/legislative/laws/2019/ic/titles/005/#5-22-3-7</a>



## Notes

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