

Instructions for completing the EDS and the Contract process.

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

1. EDS Number: A70-7-0527  
2. Date prepared: 9/21/2006

### 3. CONTRACTS & LEASES

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

### FISCAL INFORMATION

4. Account Number: 3610-14127. 539000  
5. Account Name: HEALTH INFORMATION SECT  
6. Total amount this action: \$21,500.00  
7. New contract total: \$21,500.00  
8. Revenue generated this action: \$0.00  
9. Revenue generated total contract: \$0.00  
10. New total amount for each fiscal year:  
Year 2007 \$21,500.00  
Year \$  
Year \$  
Year \$

### TIME PERIOD COVERED IN THIS EDS

11. From (month, day, year): 10/1/2006  
12. To (month, day, year): 3/31/2007  
13. Method of source selection: ☐ Bid/Quotation ☐ Emergency ☐ Negotiated ☐ Special Procurement  
☐ RFP# ☒ Other (specify) GRANT PTNR

35. Will the attached document involve data processing or telecommunications systems(s)?

Yes: IOT or Delegate has signed off on contract

36. Statutory Authority (Cite applicable Indiana or Federal Codes):  
IN PART FROM (SB566, 2005 LEGISLATION)

37. Description of work and justification for spending money. (Please give a brief description of the scope of work included in this agreement.)

This request is to meet the requirements of a RTI subcontract as part of a National Governor's Association proposal for Health Information Security and Privacy Collaboration. The primary responsibilities of the contractor is to assess the legal issues associated with the business practices as described by the Variations Committee and to help formulate interim solutions, final solutions, and the implementation plan. Chris Sears was a identified as key partner in the state's application for this subcontract.

38. Justification of vendor selection and determination of price reasonableness:

The proposal submitted by Chris Sears was reviewed and approved by both ISDH staff and by a separate review from the RTI/NGA review team. (RTI/NGA) represents the group that holds the subcontract with ISDH.)

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

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

### AGENCY INFORMATION

14. Name of agency: Department of Health  
15. Requisition Number:  
16. Address: 2 N. Meridian Street  
Indianapolis, IN 46204

### AGENCY CONTACT INFORMATION

17. Name: Dr. Roland Gamache  
18. Telephone #: 317 2341335  
19. E-mail address: rgamache@isdh.IN.gov

### COURIER INFORMATION

20. Name: Dr. Roland Gamache  
21. Telephone #: 317 2341335  
22. E-mail address: rgamache@isdh.IN.gov

### VENDOR INFORMATION

23. Vendor ID #: 0000052217  
24. Name: ICE MILLER DONADIO & RYAN  
25. Telephone #: (317) 236-5891  
26. Address: ONE AMERICAN SQUARE  
INDIANAPOLIS, IN 46282-0002  
27. E-mail address: christopher.sears@icemiller.com  
28. Is the vendor registered with the Secretary of State? (Out of State Corporations, must be registered) ☒ Yes ☐ No  
29. Primary Vendor: M/WBE  
Minority: ☐ Yes ☒ No  
Women: ☐ Yes ☒ No  
30. If yes, list the %:  
Minority: %  
Women: %  
31. Sub Vendor: M/WBE  
Minority: ☐ Yes ☒ No  
Women: ☐ Yes ☒ No  
32. If yes, list the %:  
Minority: %  
Women: %  
33. Is there Renewal Language in the document? ☐ Yes ☒ No  
34. Is there a "Termination for Convenience" clause in the document? ☒ Yes ☐ No

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SEP 24 2006

OAG-ADVISORY

**PROFESSIONAL/PERSONAL SERVICES CONTRACT  
EDS# A70-7-0527**

**3610-539000-141270**  
**HISPC 516-1A**

This Contract, entered into by and between **Indiana State Department of Health** (hereinafter referred to as "State") and **Ice Miller, LLP** (hereinafter referred to as "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 assess the legal issues associated with the business practices as described by the Variations Committee and to help formulate interim solutions, final solutions, and the implementation plan. This project is described fully in Attachment A, attached hereto, and made a part hereof and incorporated herein by reference as part of this Contract.

**2. Consideration**

The Contractor will be paid monthly in arrears using the rates set out on Attachment A. Total remuneration under this Contract shall not exceed \$21,500.

**3. Term**

This Contract shall commence on October 1, 2006 and shall remain in effect through March 31, 2007.

**4. Access to Records**

The Contractor and its subcontractors shall maintain all books, documents, papers, accounting records, and other evidence (Records) pertaining to costs incurred, for inspection by the State or by any other authorized representative of the State and copies thereof shall be furnished at no cost to the State if requested. The Contractor and its subcontractors shall make all Records available at their respective offices at all reasonable times during the Contract period and for three (3) years from the date of final payment under the Contract or longer if an audit has been completed and all audit exceptions have not been cleared by the State.

**5. Assignment; Successors**

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

## **6. Audits**

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

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

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

## **8. Changes in Work**

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

## **9. Compliance with Laws**

- A. The Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.
- B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6 *et seq.*, IC § 4-2-7, *et. seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§ 4-2-6 and 4-2-7.
- C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The Contractor agrees that any payments currently due to the State may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

- D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.
- E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties.
- F. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC § 5-17-5.
- G. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.
- H. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.
- I. Contractor agrees that the State may confirm, at any time, that no liabilities exist to the State of Indiana, and, if such liabilities are discovered, that State may bar Contractor from contracting with the State in the future, cancel existing contracts, withhold payments to setoff such obligations, and withhold further payments or purchases until the entity is current in its payments on its liability to the State and has submitted proof of such payment to the State.
- J. As required by IC 5-22-3-7:
  - 1. The Contractor and any principals of the Contractor certify that (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

2. The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

#### **10. Condition of Payment**

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

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

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

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

A. As used in this section:

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

"Interested party," means:

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

"Department" means the Indiana Department of Administration.

"Commission" means the State Ethics Commission.

- B. The Department may cancel this Contract without recourse by the Contractor if any interested party is an employee of the State.
- C. The Department will not exercise its right of cancellation under section B, above, if the Contractor gives the Department an opinion by the Commission indicating that the existence of this Contract and the employment by the State of the interested party does not violate any statute or rule relating to ethical conduct of State employees. The Department may take action, including cancellation of this Contract, consistent with an opinion of the Commission obtained under this section.

- D. The Contractor has an affirmative obligation under this Contract to disclose to the Department when an interested party is or becomes an employee of the State. The obligation under this section extends only to those facts that the Contractor knows or reasonably could know.

**13. Continuity of Services – Deleted**

**14. Debarment and Suspension**

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

**16. Disputes**

- A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs. If the State and the Contractor cannot resolve a dispute within ten (10) working days following notification in writing by either party of the existence of a dispute, then the following procedure shall apply:

1. The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration or mediation for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.
2. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

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

The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace.

False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, the Contractor hereby further agrees that this Contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

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

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

#### **18. Employment Option – Deleted**

#### **19. Force Majeure**

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

#### **20. Funding Cancellation**

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



## **21. Governing Laws**

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

## **22. Indemnification**

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

## **23. Independent Contractor**

Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

## **24. Information Technology Enterprise Architecture Requirements**

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

## **25. Insurance**

- A. The Contractor shall secure and keep in force during the term of this Contract, the following insurance coverages, covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from this Contract:
  - 1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$700,000 per person and \$1,000,000 per occurrence unless additional coverage is required by the State.

2. Automobile liability with minimum liability limits of \$700,000 per person and \$1,000,000 per occurrence.
  3. The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of workers compensation coverage meeting all statutory requirements of IC 22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.
- B. The Contractor's insurance coverage must meet the following additional requirements:
1. The insurer must have a certificate of authority issued by the Indiana Department of Insurance.
  2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
  3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.
  4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.

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.

#### **26. Key Person(s) - Deleted**

#### **27. Licensing Standards**

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

## **28. Merger & Modification**

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

## **29. Minority and Women's Business Enterprises Compliance**

The Contractor agrees to comply fully with the provisions of the provisions of 25 IAC 5 and any participation plan that may have been submitted to the State.

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

MBE/WBE	PHONE	COMPANY NAME	SCOPE OF PRODUCTS and/or SERVICES	UTILIZATION DATE	AMOUNT
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## **30. Nondiscrimination**

- A. Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this Contract. The Contractor shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Contract. The Contractor's execution of this Contract also signifies compliance with applicable federal laws, regulations and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.
- B. The Contractor understands that the State is a recipient of federal funds. Pursuant to that understanding, the Contractor and its subcontractor, if any, agree that if the Contractor employs fifty (50) or more employees and does at least \$50,000 worth of business with the State and is not exempt, the Contractor will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The Contractor shall comply with Section 202 of Executive Order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of this Contract.

## **31. Notice to Parties**

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

A. Notices to the State shall be sent to:

Indiana State Department of Health  
ATTN: Contract and Audit Section  
2 North Meridian Street, Section 2-C  
Indianapolis, IN 46204

B. Notices to the Contractor shall be sent to:

Ice Miller, LLP  
ATTN: Christopher S. Sears  
One American Square  
Suite 3100  
Indianapolis, IN 46282

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

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

Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) This Contract, and (2) attachment(s) prepared by the State. All of the foregoing are incorporated fully by reference.

**33. Ownership of Documents and Materials**

All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor transfers any ownership claim to the State and all such materials will be the property of the State. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. Full, immediate and unrestricted access to the work product of the Contractor during the term of this Contract shall be available to the State.

**34. Payments**

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

B. All accounts will be closed sixty (60) days after the end of the Contract period. Any invoice submitted after sixty (60) days will not be reimbursed by the State.

C. All equipment purchased with federal funds is subject to 45 CFR 92.32.

### **35. Penalties/Interest/Attorney's Fees**

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

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

### **36. Progress Reports**

A. The Contractor shall submit progress reports to the State upon request, unless specified otherwise in Attachment A. 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.

B. The failure to provide progress reports as requested by the State is considered a material breach of the Contract and shall entitle the State to impose sanctions against the Contractor. Sanctions may include, but are not limited to, suspension of all Contract payments, and/or suspension of the Contractor's participation in State contract programs until such time as all material breaches are cured to the State's satisfaction. Sanctions may also include repayment of all State funds expended for activities that are not in the scope of this project as set forth in Attachment A of this Contract.

### **37. 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 Director of the Office of Management and Budget 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.

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

If any final regulation or body of regulations relating to the administrative simplification provision of the Health Insurance Portability and Accountability Act of 1996 ("Final HIPAA Regulations"), or any amendment or judicial or administrative interpretation of the Final HIPAA Regulations, prohibits, restricts, limits or materially and adversely affects either party's right or obligations hereunder, the parties shall negotiate, in good faith, reasonable revisions to this Contract. The purpose of the negotiations shall be to revise the Contract so that the affected party can comply and/or act in accordance with such Final HIPAA Regulations, or amendment or judicial or administrative interpretation thereof and avoid or mitigate such prohibition, restriction, limitation or material and adverse effect.

If the parties fail to agree to such revisions within forty-five (45) days after written notice from the affected party requesting negotiations under this paragraph, this Contract shall terminate. If so terminated the Contractor shall return all protected health information received from, created or received by the Contractor on behalf of the State. The Contractor shall retain no copies of such information in any form.

#### **39. Severability**

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

#### **40. Substantial Performance**

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

#### **41. Taxes**

The State is exempt from 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.

#### **42. Termination for Convenience**

This Contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

#### **43. Termination for Default - Deleted**

#### **44. Travel**

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

#### **45. Waiver of Rights**

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

#### **46. Work Standards**

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

#### **47. Amendments**

No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties hereto. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto. Any alterations or amendments, except a change between budget categories, which requires the prior written consent of a duly authorized representative of the State, shall be subject to the contract approval procedure of the State.

#### **48. Cultural Competency**

- A. If this Contract involves direct public contact, the State will offer cultural competency training in culturally appropriate responses which meet the needs of the current demographic and cultural profile of the communities served by this Contract. This training is based on standards recommended by the U.S. Department of Health and Human Services' (HHS) Office of Minority Health (OMH).
- B. The Contractor agrees to participate in one session of the cultural competency training presented by the State during the term of this Contract. The Contractor shall designate a representative who will attend this training or otherwise show evidence that a representative has received approved cultural competency training. The Contractor shall be responsible for ensuring that a representative of its subcontractors will attend this training as well. The State Health Commissioner may waive this training requirement upon application and justification submitted by the Contractor that they have received approved cultural competency training within the year prior to the beginning date of this Contract.
- C. The State's cultural competency training is offered to contractors and subcontractors at no cost. Travel and incidental expenses incurred in obtaining the state's competency training that do not exceed the maximum amount allowed under state rules and do not exceed any conditions placed upon the use of the grant funds may be reimbursed by the State under this Contract. The Contractor and/or subcontractor shall be responsible for any travel and incidental expenses that exceed the maximum limit or any other conditions set for the use of these contract funds.

- D. Prior to the expiration of this Contract, the State's Cultural Diversity & Enrichment (CDE) Division may provide a cultural competency assessment form to the Contractor that must be completed and returned to the CDE Division within thirty (30) days of receipt of the form.

#### **49. Remedies Not Impaired**

No delay or omission of the State in exercising any right or remedy available under this Contract shall impair any such right or remedy, or constitute a waiver of any default, or any acquiescence thereto.

#### **50. State Boilerplate Affirmation Clause**

I swear or affirm under the penalties of perjury that I have not altered, modified or changed the State's Boilerplate contract clauses (as defined in the February, 2006 IDOA Professional Services Contract Manual) in any way except for the following clauses:

Access to Records  
Compliance with Laws  
Order of Precedence  
Payments  
Progress Reports  
Security and Privacy of Health Information  
Travel

#### **51. Non-Collusion and Acceptance**

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

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



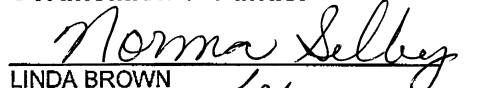
In Witness Whereof, Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below hereby agree to the terms thereof.

Accepted By:

  
CHRISTOPHER S. SEARS


DATE: December 7, 2006

Certification of Funds:

  
LINDA BROWN  
DIRECTOR  
DIVISION OF FINANCE  
OPERATIONAL SERVICES COMMISSION  
INDIANA STATE DEPARTMENT OF HEALTH

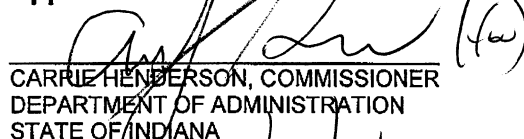
DATE: 12/20/06

Recommended and Approved By:

  
MARY L. HILL, RN, ESQ.  
DEPUTY STATE HEALTH COMMISSIONER  
INDIANA STATE DEPARTMENT OF HEALTH

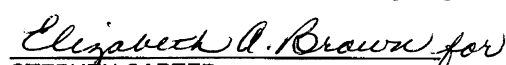
DATE: 12-12-06

Approved:

 (fw)  
CARRIE HENDERSON, COMMISSIONER  
DEPARTMENT OF ADMINISTRATION  
STATE OF INDIANA

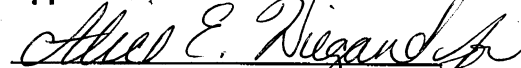
DATE: 12/27/06

Approved as to Form and Legality:

 for  
STEPHEN CARTER  
ATTORNEY GENERAL OF INDIANA

DATE: 1-29-07

Approved:

  
CHARLES SCHALLIOL, DIRECTOR  
OFFICE OF MANAGEMENT and BUDGET  
STATE OF INDIANA

DATE: 1/3/2007

## **Attachment A**

### **SCOPE OF WORK**

#### **Description of Services:**

Chris Sears is to provide full-time leadership and he is to be responsible for the state Legal Working Group (LWG) as part of the Health Information Security and Privacy Collaboration (HISPC). To accomplish this work and to be consistent with the recommended structure in the RFP, Chris Sears and the Ice Miller Partners will work with the Regenstrief Institute, who will be responsible for organizing and managing the variations, legal, solutions, and implementation workgroups.

Chris Sears, and other Ice Miller Partners and Associates, are to: assist in assessing applicable privacy and security policies underlying all applicable forms of law and identify legal sources of barriers to interoperable electronic health records; review the barriers to applicable state privacy and security laws; develop a set of recommended policies consistent with the laws of Indiana; and work with the Solutions Working Group and the Implementation Planning Working Group to ensure that laws are accurately and consistently interpreted throughout the process of formulating solutions and planning implementation of such solutions. The Legal Work Group Chair is also required to attend the national meeting to be held in early 2007.

The Legal Work Group will work with Regenstrief and the Variations Work Group to identify barriers to interoperable health information exchange that may be due to federal or state law, or the misinterpretation of such laws. Regenstrief's General Counsel, Viki Prescott, Esq. will lead the coordination of these efforts to ensure that all project goals and timelines are met.

The combined analysis of organization-level business policy and law will form the basis for the assessment of variation, which includes a classification of barriers and challenges and an assessment of whether those barriers are being driven by the law or are the result of misinterpretation of the law or a deliberate decision to incorporate policy and business needs that is more restrictive than law requires.

#### **Release of Information**

Subcontractor agrees not to use the other party's name or make reference to the other party or any of its employees in publications, news releases, advertising, speeches, technical papers, photographs, sales promotions, or publicity purposes of any form related to this work or data developed hereunder, unless such materials have received prior written approval of the other party. Approvals shall not be unreasonably withheld. Unless specifically restricted in the Subcontract, use of either party's name may be made in internal documents, annual reports, and data bases which are available to the public and which identify the existence of the research project by title, principal investigator, sponsor, period of funding, amount of award and abstract of the project.

Publication and Dissemination of Material Derived from Work Performed under This Subcontract

As permitted in FAR 52.227-14, the provisions of this Section H.1 shall apply to any publication, release, or use of data first produced in the performance of this contract and any analysis based on such data.

Section 924(c) of the Public Health Service Act (PHS Act) (42 U.S.C. 299c-(3)) states in part that

No information, if the establishment or person supplying the information or described in it is identifiable, obtained in the course of activities undertaken or supported under this title, may be used for any purpose other than the purpose for which it was supplied unless such establishment or person has consented...to its use for such other purpose. Such information may not be published or released in other form if the person who supplied the information or who is described in it is identifiable unless such person has consented...to its publication or release in other form.

To ensure compliance with these requirements and to fulfill the mandate of 923(b)(1) of the PHS Act (42 U.S.C. 299c-2(b)(1)) to assure that statistics and analyses developed with Agency for Healthcare Research and Quality (AHRQ) support are of high quality, comprehensive, timely, and adequately analyzed, Subcontractor shall provide any proposed publication based upon work performed under this contract, consult with AHRQ, through RTI, regarding the proposed draft and, in good faith, consider, discuss, and respond to comments and suggested modifications that are provided by AHRQ within two months of receiving the proposed report, article, presentation, data release, or other proposed publication of such material, in order to assure that:

- (a) any identifiable information is being used exclusively for the purpose(s) for which it was supplied;
- (b) the privacy of individuals and confidentiality of establishments supplying identifiable information or described in it is not violated; and
- (c) the quality of statistical and analytical work meets the statutory standards cited above.

Subcontractor will, in advance of publication or dissemination with or without concurrence, certify in a letter to the RTI Subcontract Administrator, who will forward it on to the AHRQ Contracting Officer, that all of the conditions (a) through (c) are satisfied.

If, after consultation, RTI, AHRQ, and Subcontractor cannot agree that the a proposed publication satisfies the conditions (a) through (c) above, the Subcontractor must print prominently on the articles or any portion that is released, or state prior to any oral or other disclosure of such articles, the following disclaimer:

THIS ARTICLE HAS NOT BEEN APPROVED BY THE AGENCY  
FOR HEALTHCARE RESEARCH AND QUALITY.

The Subcontractor must print the following statement prominently on written reports or other forms of recorded data derived from work performed under this Subcontract that is to be published or released; or preceding any presentation or other oral disclosure of such material make the following statement:

IDENTIFIABLE INFORMATION ON WHICH THIS REPORT, PRESENTATION, OR OTHER FORM OF DISCLOSURE IS BASED IS PROTECTED BY FEDERAL LAW, SECTION 924(c) OF THE PUBLIC HEALTH SERVICE ACT, 42 U.S.C. 299c-3(c). ANY CONFIDENTIAL IDENTIFIABLE INFORMATION IN THIS REPORT OR PRESENTATION THAT IS KNOWINGLY DISCLOSED IS DISCLOSED SOLELY FOR THE PURPOSE FOR WHICH IT WAS PROVIDED. NO IDENTIFIABLE INFORMATION ABOUT ANY INDIVIDUALS OR ENTITIES SUPPLYING THE INFORMATION OR DESCRIBED IN IT WILL BE KNOWINGLY USED EXCEPT IN ACCORDANCE WITH THEIR PRIOR CONSENT.

Except for claims to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this Subcontract and published in academic, technical or professional journals, symposia proceeding or similar works, the Subcontractor shall establish claim to copyright to data first produced in the performance of this Subcontract and assign it to the government, subject to a paid up, nonexclusive, irrevocable, worldwide license to publish any of those data or any analyses based on those data. These nonexclusive rights may not be assigned by the Subcontractor.

Whenever data or analyses are to be developed by a lower-tier subcontractor under this contract, the Contractor must include the terms of this Article in the lower-tier subcontract, without substantive alteration, with a provision that the lower-tier subcontractor may not further assign to another party any of its obligations to Subcontractor. No clause may be included to diminish the Government's stated requirements regarding publication and dissemination of work or material derived from work performed under this contract.

Lack of Compliance with Publication Requirements

Failure to submit materials for statutorily mandated confidentiality and statistical and analytic quality reviews as required by "Publication and Dissemination of Material Derived from Work Performed under This Subcontract" of this Subcontract will be viewed as a material violation and breach of the terms of this Subcontract, as the requirements of this provision are necessary for AHRQ to carry out its statutory obligations and responsibilities. Records of the Subcontractor's performance, including the Subcontractor's performance pertaining to this Subcontract term, will be maintained in AHRQ's Contracts Management Office and will be considered as an element of past performance which is part of all subsequent competitive contract proposal reviews.

**Date Service Began:**

October 1, 2006

**Termination Date:**

This Agreement shall terminate on March 30, 2007.

**Agreed Upon Monetary Compensation:**

\$21,500 total sum for services based on the following schedule and demonstrated completion of deliverables.

October 30, 2006	\$3,000
November 30, 2006	\$3,000
December 30, 2006	\$3,000
January 30, 2007	\$3,000
February 28, 2007	\$3,000
Attend National meeting	\$6,500

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<b>Total</b>	<b><u>\$21,500</u></b>
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