

**CONTRACT BETWEEN
IOWA ECONOMIC DEVELOPMENT AUTHORITY
AND _____**

The parties agree as follows:

SECTION 1 IDENTITY OF THE PARTIES

1.1 The Iowa Economic Development Authority (IEDA) is authorized to enter into this Contract pursuant to Iowa Code section _____. IEDA's address is 1963 Bell Avenue, Des Moines, IA 50315. The Principal Contact for IEDA is:

_____, _____ Team Leader
Phone: 515-348-_____
Email: _____@iowaeda.com

1.2 _____ (Contractor) is organized pursuant to _____ law and is authorized to do business in the State of Iowa. Contractor's address is _____. The Principal Contact for Contractor is:

Phone: _____
Email: _____

SECTION 2 PURPOSE

The parties have entered into this Contract for the purpose of _____.

SECTION 3 DURATION OF CONTRACT

3.1 The term of this Contract shall be from _____ to _____, unless terminated earlier in accordance with the Termination section of this Contract.

3.2 IEDA shall have the sole option to renew and extend this contract for subsequent periods, adding up to no more than three years total, by executing a signed contract extension prior to the expiration of this Contract.

SECTION 4 SCOPE OF SERVICES

4.1 Contractor shall provide the services described on the attached EXHIBIT A: STATEMENT OF WORK AND BUDGET (SOW/Budget).

4.1 All tasks shall be completed in accordance with 261 *Iowa Administrative Code* Chapters 105, 106, 108 and 117.

4.2 Contractor shall not enter into agreements with subcontractors without prior IEDA approval except as stated herein.

4.3 Reserved

4.4 Monitoring Clause. In compliance with the State of Iowa Accountable Government Act, IEDA will monitor Contractor's performance monthly by logging any complaints regarding Contractor's performance and meeting with Contractor to address those complaints to ensure that Contractor is meeting the deliverables of the Contract and achieving the specified results. Contractor will be required throughout the duration of the Contract to satisfactorily provide timely maintenance services in order to meet the desired outcomes.

4.5 Review Clause. IEDA will review all work performed by Contractor under this Contract and recommend payment for that work, or portion of the work, that conforms to this Contract. IEDA shall have the right to review and observe, at any time, completed work or work in progress. Contractor shall allow the State of Iowa or IEDA to, without cost, inspect its facilities and books and records relating to invoicing and time records for the purpose of monitoring and evaluating performance of this Contract.

SECTION 5 COMPENSATION

5.1 Pricing. For the services described in the SOW/Budget, Contractor will be paid an amount not to exceed _____ Dollars (\$_____) allocated as set out in the SOW/Budget attached hereto. The amount is based on the level of service performed.

5.2 Billings. Contractor shall submit an invoice each month for services rendered in accordance with this Contract. Each invoice shall comply with all applicable rules concerning payment of such claims. IEDA shall pay all approved invoices in arrears and in conformance with Iowa Code section 8A.514 (2011). IEDA may pay in less than sixty (60) days, as provided in Iowa Code section 8A.514 (2011). However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code section 8A.514 (2011).

5.3 Delay of Payment Due to Contractor's Failure to Perform or Deliver. If IEDA determines that Contractor has failed to perform or deliver any service or product required by this Contract, Contractor shall not be entitled to any compensation or any further compensation, if compensation has already occurred under this Contract, until such service or product is performed or delivered. IEDA shall withhold that portion of the invoice amount which represents payment for the task or deliverable that was not completed, delivered and successfully deployed.

5.4 Erroneous Payments and Credits. Contractor shall promptly repay or refund to IEDA the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by Contractor or notification by IEDA of the overpayment or erroneous payment.

5.5 Set-off Against Sums Owed by Contractor. In the event that Contractor owes IEDA or the State of Iowa any sum under the terms of this Contract, any other Contract, pursuant to any judgment, or pursuant to any law and including, but not limited to, any State taxes in arrears, IEDA may set off such sum against any sum invoiced to IEDA by Contractor. This may be done in the IEDA's sole discretion, unless otherwise required by law.

SECTION 6 TERMINATION

6.1 Immediate Termination by IEDA. IEDA may terminate this Contract immediately without advance notice for any of the following reasons: IEDA determines that the actions of, or failure to act by Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, a client's life, health or safety to be jeopardized; Contractor fails to comply with confidentiality laws or provisions; or Contractor furnished any statement, representation or certification in connection with this Contract or the RFP which is materially false, deceptive, incorrect or incomplete. In the event Contractor is required to be certified or licensed as a condition precedent to providing services, the revocation or loss of such license or certification will result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect.

6.2 Termination for Cause. IEDA may terminate the Contract for cause if Contractor breaches the Contract; becomes the subject of any bankruptcy or insolvency proceeding; has failed to comply with applicable state or federal laws, rules, ordinances, regulations or orders; or has otherwise engaged in conduct that has or may expose the State or IEDA to liability, as determined in the IEDA's sole discretion. If Contractor breaches or does not comply with any term, provision, promise, representation, or warranty of this Contract, IEDA shall provide written notice to Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the IEDA's written notice to Contractor. If the breach or noncompliance is not remedied by the date specified in the written notice, IEDA may immediately terminate the Contract without additional written notice.

6.3 Following 30 days' written notice, IEDA may terminate this Contract in whole or in part without the payment of any penalty or incurring any further obligation to Contractor. Following termination upon notice, Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for services provided under this Contract to IEDA up to and including the date of termination.

6.4 Termination Due to Lack of Funds or Change in Law. IEDA shall have the right to terminate this Contract without penalty by giving thirty (30) days' written notice to Contractor if, in IEDA's sole discretion, adequate funds are not appropriated or granted to allow IEDA to operate as required and to fulfill its obligations under this Contract; if funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by IEDA to make any payment hereunder are insufficient or unavailable for any other reason as determined by IEDA in its sole discretion; if IEDA's authorization to conduct its business or engage in activities or operations related to the subject matter of this Contract is withdrawn or materially altered or modified; if IEDA's duties, programs or responsibilities are modified or materially altered; or if there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects IEDA's ability to fulfill any of its obligations under this Contract.

6.5 The Contractor's Termination Duties. Upon receipt of notice of termination or upon request of IEDA, Contractor shall: cease work under this Contract and take all necessary or appropriate steps to limit disbursement and minimize costs and furnish a report within thirty (30) days of the date of notice of termination describing the status of all work under the Contract including, without limitation, results accomplished and conclusions resulting therefrom and any other matters IEDA may require; immediately cease using and return to IEDA any personal property or materials, whether tangible or intangible, provided by IEDA to the Contractor; and comply with IEDA's instructions for the timely transfer of any active files and work product produced by Contractor under this Contract.

SECTION 7 REPRESENTATIONS AND WARRANTIES

7.1 Property, Concepts, Materials, and Works Produced. Contractor represents and warrants that title to any property assigned, conveyed or licensed to IEDA is good, that transfer of title or license to IEDA is rightful, and that all property shall be delivered free of any security interest or other lien or encumbrance. Contractor represents and warrants that all the concepts, materials and works produced or provided to IEDA pursuant to the terms of this Contract shall be wholly original with Contractor or that Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works.

7.2 Professional Practices. Contractor represents and warrants that all of the services to be performed hereunder will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel.

7.3 Authority to Enter into Contract. Contractor represents and warrants that it has full authority to enter into this Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to IEDA.

SECTION 8 DATA AND WORK PRODUCTS

8.1 Rights in Data. IEDA shall be and shall remain the owner of all data and records provided to Contractor. Contractor will not use IEDA's data and records for any purpose other than providing services under the Contract, nor will any part of the data and records be disclosed, sold, assigned, leased, or otherwise disposed of to third parties or commercially exploited by or on behalf of Contractor except as otherwise prescribed by law. See 5.107C.

8.2 Ownership of Work Product. IEDA shall own all work products and deliverables developed or furnished in connection with the Contract by Contractor or any subcontractor to the extent that any work products or deliverables are generated as a result of this Contract. Contractor shall require that all agreements with subcontractors provide for the irrevocable assignment of rights to IEDA, without additional consideration, of all work products and deliverables of the subcontractors.

SECTION 9 INDEMNIFICATION AND INSURANCE

9.1 Contractor agrees to indemnify and hold harmless the State of Iowa and IEDA, its or their officers, employees and agents, appointed and elected, and volunteers, from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, and the costs and expenses and reasonable attorneys' fees of other counsel retained to represent the State of Iowa or IEDA, related to or arising from its acts. Contractor's obligation for indemnification shall survive termination of this Contract.

9.2 Unless otherwise agreed in writing by IEDA, Contractor shall cause to be issued the following insurance coverages in the amounts specified:

General Liability: \$2,000,000 Per Occurrence, \$4,000,000 Aggregate
Product Liability: \$2,000,000 Per Occurrence, \$4,000,000 Aggregate
Personal Injury: \$2,000,000 Per Occurrence, \$4,000,000 Aggregate
Property Damage: \$300,000 Per Occurrence

In addition, Contractor shall ensure that it has professional liability coverage and any necessary workers' compensation and employer liability insurance, as required by Iowa law.

9.3 Contractor shall obtain a waiver of subrogation rights that any of its insurance carriers might have against the State of Iowa. The waiver shall be indicated on the certificates of coverage, copies of which shall be supplied to IEDA.

SECTION 10 LIMITATION OF LIABILITY

10.1 Contractor expressly acknowledges that the services procured by this Contract are subject to legislative change by either the federal or state government. Should either legislative body enact measures which alter the services to be provided under this Contract, Contractor shall not hold IEDA liable in any manner for the resulting changes. IEDA shall use its best efforts to provide thirty (30) days' written notice to the Contractor of any legislative change. During the thirty (30) day period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address the legislative changes. Nothing in this Subsection shall affect or impair IEDA's right to terminate the Contract pursuant to the termination provisions.

10.2 IEDA shall not be liable for any indirect, incidental, consequential, punitive, reliance, or special damages arising from or related to the Contract, including, but not limited to, lost profits, savings, advantage, or revenues, or increased cost of operations. IEDA's total liability for any direct damages arising from or related to the Contract shall not exceed one (1) times the total amount IEDA pays to the Contractor under this Contract.

SECTION 11 ADDITIONAL PROVISIONS

11.1 Independent Contractor. The status of Contractor shall be that of an independent contractor.

Nothing in this Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, other association of any kind, or agent and principal relationship between the parties hereto. Contractor, its employees, agents and subcontractors performing under this Contract are not employees or agents of the State of Iowa or of any agency, division or department of the state. Neither Contractor nor its employees shall be considered employees of IEDA or the State of Iowa for federal or state tax purposes. IEDA will not withhold taxes on behalf of Contractor, its employees, agents, or subcontractors, unless required by law.

11.2 Compliance with the Law. Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing the services under this contract.

11.3 Conflict of Interest. Contractor covenants that it presently has no interest and shall not acquire any interest, direct and indirect, which would conflict in any manner or degree with the performance of services required under this Contract. Contractor further covenants that, in the performance of this Contract, no person having any such interest shall be employed. In addition, during the term of this Contract, Contractor shall not provide services that would create a conflict of interest with Contractor's duties set out in this Contract.

11.4 Amendments. This Contract may be amended in writing from time to time by mutual consent of the parties. All amendments to this Contract must be in writing and executed by all parties.

11.5 Choice of Law and Forum.

11.5.1. The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Agreement without regard to the choice of law provisions of Iowa law or any other principles of conflicts of law.

11.5.2. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Agreement, the proceeding shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if such court has jurisdiction. If however, such court lacks jurisdiction and jurisdiction lies only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division.

11.5.3. Nothing in this Agreement shall be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to IEDA or its agents, officers, employees, representatives, predecessors, successors, assigns, attorneys, agencies, divisions, departments, commissions, commissioners, boards, board members, and all other persons or entities acting on behalf of the State of Iowa.

11.6 Assignment and Delegation. This Contract may not be assigned, transferred, conveyed, or delegated in whole or in part without the prior written consent of the other party.

11.7 Nonprofit Corporation – Disclosure of Financial Assistance. If Contractor is a nonprofit corporation organized under chapter 504 or under the similar laws of another jurisdiction, Contractor shall disclose to IEDA all gifts, grants, bequests, donations or other conveyances of financial assistance to the

corporation from all private and public sources. Such disclosure shall include information from the corporation's current fiscal year and its three most recent fiscal years and shall include the name and address of the person or entity making the conveyance and the amount.

11.8 Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of IEDA and Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

11.9 Notice. Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested; by receipted hand delivery; or by Federal Express, courier or other similar and reliable carrier, and shall be addressed to each party as set forth as in Section 1 of this Contract. From time to time, the parties may change the name and address of a person designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

11.10 Severability. If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Contract.

11.11 Public Records. Contractor shall comply with the requirements of *Iowa Code* Chapter 15.107C and *Iowa Code* Chapter 22, including *Iowa Code* Section 22.7 (2011), which defines confidential records and prescribes confidential handling procedures and shall maintain all documents related to this Contract sufficiently and properly throughout the term of this Contract and for a period of at least five years following receipt of Contractor's final payment, whichever occurs last, and shall allow IEDA and any other representative of the state or federal government to access and examine, audit, excerpt and transcribe any directly pertinent documents at no cost to the state or federal government.

11.12 Confidential Information. Contractor's employees, agents and subcontractors may have access to confidential information maintained by IEDA to the extent necessary to carry out its responsibilities under the Contract. Contractor shall assume that all information received pursuant to this Contract is confidential unless otherwise designated by IEDA or covered under Chapter 15.107C. The private or confidential information shall remain the property of IEDA at all times. No confidential information collected, maintained, or used in the course of performance of the Contract shall be disseminated by Contractor except as authorized by law and only with the prior written consent of IEDA, either during the period of the Contract or thereafter. Contractor may be held civilly or criminally liable for improper disclosure of confidential information. In the event that a subpoena or other legal process is served upon Contractor for records containing confidential information, Contractor shall promptly notify IEDA and cooperate with IEDA in any lawful effort to protect the confidential information. Contractor shall immediately report to IEDA any unauthorized disclosure of confidential information. Contractor's obligations under this paragraph shall survive termination or expiration of this Contract.

11.13 Obligations beyond Contract Term. This Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Contract. All obligations of IEDA and

Contractor incurred or existing under this Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or cancellation of this Contract.

11.14 Additional Provisions. The parties agree that if an Addendum, Rider or Exhibit is attached hereto by the parties and referred to herein, the same shall be deemed incorporated herein by reference.

11.15 Delay or Impossibility of Performance. Contractor shall not be in default under this Contract if performance is delayed or made impossible by an act of God, flood, fire or similar events. In each such case, the delay or impossibility must be beyond the control and without the fault or negligence of Contractor. If delay results from a subcontractor's conduct, negligence or failure to perform, Contractor shall not be excused from compliance with the terms and obligations of this Contract.

11.16 Non-Exclusive Rights. This Contract is not exclusive. IEDA reserves the right to select other contractors to provide services similar or identical to the Scope of Services described in this Contract during the term of this Contract.

11.17 Immunity from Liability. Every person who is a party to the Contract is hereby notified and agrees that the State, IEDA and all of its or their employees, agents, successors, and assigns, are immune from liability and suit for Contractor's and/or subcontractors' activities involving third parties arising from the Contract. Pursuant to *Iowa Code* chapter 669, IEDA and the State of Iowa are self-insured against all risks and hazards related to this Contract. No separate fund has been established to provide self-insurance, and the State of Iowa is not obligated to establish any such fund during the term of this Contract.

11.18 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Contract.

11.19 Complete Integration. This Contract contains the entire understanding between IEDA and Contractor and any representations that may have been made before or after signing this Contract, which are not contained herein, are nonbinding, void and of no effect. None of the Parties has relied on any such prior representation in entering into this Contract.

SECTION 12 EXECUTION

In consideration of the mutual covenants set forth above and for other goods and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Contract, which represents the entire Contract between the parties, and have caused their duly authorized representatives to execute this Contract.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IOWA ECONOMIC DEVELOPMENT AUTHORITY:

By: _____
Deborah V. Durham, Director

Date: _____

_____:

By: _____

Date: _____

Federal Tax Identification Number: _____