

**INDIANA FINANCE AUTHORITY
PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (“Agreement”), by and between the Indiana Finance Authority (“the IFA”) and _____, whose address is _____ (“the Service Provider”), is entered into upon the terms and conditions set forth herein. In consideration of the mutual undertakings and covenants contained herein, the parties agree as follows:

1. **Duties and Services.** [Add description of duties/services here if necessary] The Service Provider shall provide the services more specifically described in the engagement letter attached hereto as Exhibit A and incorporated herein by reference (the “Services”). The Service Provider understands that the Services will be delivered at the direction of the IFA.
2. **Consideration.** [Add descriptions of consideration/fees/payment here] The IFA shall be billed on a monthly basis for fees and expenses relating to the Services. Such monthly billing statements must include detailed time entries. Total remuneration under this Agreement, including all fees and expenses, shall not exceed _____ dollars (\$_____) over the Initial Term (as defined below). In the event the Services continue beyond the Initial Term set out in this Agreement, this fee arrangement is subject to review, extension, and increase at the discretion of the IFA in consultation with the Service Provider based on the need for the continued Services. The IFA will not compensate the Service Provider for time spent responding to audit response letters, and will not pay the Service Provider to apprise other staff of the status and extent of work completed due to staffing changes made by the Service Provider.
3. **Term.** The term of this Agreement shall commence on _____ and shall remain in effect through _____ (the “Initial Term”), unless renewed or extended by mutual agreement of the parties in accordance with section 36, or unless earlier terminated in accordance with the provisions of this Agreement.
4. **Access to Records.** The Service Provider and its approved assignees and subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Agreement. They shall make such materials available at their respective offices at all reasonable times during the Initial Term of this Agreement, and for three (3) years from the date of final payment under this Agreement, for inspection by the IFA or its authorized designees. Copies shall be furnished at no cost to the IFA if requested.
5. **Assignment; Successors.** The Service Provider binds its successors and assignees to all the terms and conditions of this Agreement. The Service Provider shall not assign or subcontract the whole or any part of this Agreement without the IFA’s prior written consent. The Service Provider may assign its right to receive payments to such third parties as the Service Provider may desire without the prior written consent of the IFA, provided that the Service Provider gives written notice (including evidence of such assignment) to the IFA thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Agreement and shall not be made to more than one party.
6. **Assignment of Antitrust Claims.** As part of the consideration for the award of this Agreement, the Service Provider assigns to the IFA all right, title and interest in and to any

claims the Service Provider now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Agreement.

7. **Audits.** The Service Provider acknowledges that it may be required to submit to an audit of funds paid through this Agreement. Any such audit shall be conducted in accordance with IC § 5-11-1, et seq. and audit guidelines specified by the State of Indiana (the “State”).
8. **Authority to Bind Service Provider.** The signatory for the Service Provider represents that he/she has been duly authorized to execute this Agreement on behalf of the Service Provider, and has obtained all necessary or applicable approvals to make this Agreement fully binding upon the Service Provider when his/her signature is affixed, and accepted by the IFA.
9. **Changes in Work.** The Service Provider shall not commence any additional work or change the scope of the work until authorized in writing by the IFA. The Service Provider shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Agreement may only be amended, supplemented, or modified by a written document executed in the same manner as this Agreement.

10. Compliance with Laws.

- A. The Service Provider 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 amendment of any applicable state or federal statute, or the promulgation of rules or regulations thereunder, after execution of this Agreement shall be reviewed by the IFA and the Service Provider to determine whether the provisions of this Agreement require formal modification.
- B. The Service Provider and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the IFA or 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 Service Provider 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 Agreement, the Service Provider shall ensure compliance with the disclosure requirements in IC § 4-2-6-10.5 prior to the execution of this Agreement. If the Service Provider is not familiar with these ethical requirements, the Service Provider 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 Service Provider or its agents violate any applicable ethical standards, the IFA may, in its sole discretion, terminate this Agreement immediately upon notice to the Service Provider. In addition, the Service Provider 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 Service Provider certifies by entering into this 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 IFA or the State. Further, the Service Provider agrees that any payments due to the IFA or the State may be withheld from payments due to the Service Provider. Additionally, further work or payments may be withheld, delayed, or denied, and/or this Agreement suspended

until the Service Provider is current in its payments and has submitted proof of such payment to the IFA or the State.

- D. The Service Provider warrants that it has no pending or outstanding criminal, civil, or enforcement actions initiated by the IFA or the State, and agrees that it will immediately notify the IFA of any such actions. During the term of such actions, the Service Provider agrees that the IFA may delay, withhold, or deny work under any supplement, amendment, change order, or other contractual device issued pursuant to this Agreement.
- E. Any payments that IFA 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 Service Provider warrants that the Service Provider and its subcontractors, if any, shall obtain and maintain all required registrations, permits, licenses, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the IFA. Failure to do so may be deemed a material breach of this Agreement and grounds for immediate termination and denial of further work with the IFA.
- G. The Service Provider affirms that, if it is an entity described in IC Title 23, it is properly registered with and owes no outstanding reports to the Indiana Secretary of State.
- H. As required by IC § 5-22-3-7:
 - (1) The Service Provider and any principals of the Service Provider certify that
 - i. the Service Provider, except for *de minimis* and nonsystematic violations, has not violated the terms of
 - 1. IC § 24-4.7 [Telephone Solicitation Of Consumers];
 - 2. IC § 24-5-12 [Telephone Solicitations]; or
 - 3. 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
 - ii. the Service Provider will not violate the terms of IC § 24-4.7 for the duration of the Agreement, even if IC § 24-4.7 is preempted by federal law.
 - (2) The Service Provider and any principals of the Service Provider certify that an affiliate or principal of the Service Provider and any agent acting on behalf of the Service Provider or on behalf of an affiliate or principal of the Service Provider, except for *de minimis* and nonsystematic violations
 - i. 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
 - ii. will not violate the terms of IC § 24-4.7 for the duration of the Agreement, even if IC § 24-4.7 is preempted by federal law.

11. Condition of Payment. All Services provided by the Service Provider under this Agreement must be performed to the IFA's reasonable satisfaction, as determined at the discretion of the undersigned IFA representative and in accordance with all applicable federal, state, local

laws, ordinances, rules, and regulations. The IFA shall not be required to pay for work found to be unsatisfactory, inconsistent with this Agreement, or performed in violation of any federal, state, or local statute, ordinance, rule or regulation.

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

13. Continuity of Services.

- A. The Service Provider recognizes that the Services to be performed under this Agreement are vital to the IFA and must be continued without interruption and that, upon Agreement expiration, a successor, either the IFA or another service provider, may continue them. The Service Provider agrees to:
 - i. Furnish phase-in training; and
 - ii. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor
- B. The Service Provider shall, upon the IFA's written notice:
 - i. Perform transition services for up to sixty (60) days after this Agreement expires; and
 - ii. Negotiate in good faith a plan with a successor to determine the nature and extent of transition 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 IFA's approval. The Service Provider shall provide sufficient experienced personnel during the transition period to ensure that the services called for by this Agreement are maintained at the required level of proficiency.
- C. The Service Provider 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 Agreement. The Service Provider 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 Service Provider shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.
- D. The Service Provider shall be reimbursed for all reasonable transition costs (i.e., costs incurred within the agreed period after contract expiration that result from the transition.)

14. Debarment and Suspension.

- A. The Service Provider certifies, by entering into this Agreement, 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 Agreement by any federal agency or by any department, agency, or political subdivision of the State. The term "principal" for purposes of this 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 Service Provider.

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

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

16. Disputes.

- A. Should any disputes arise with respect to this Agreement, the Service Provider and the IFA agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- B. The Service Provider agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Agreement that are not affected by the dispute. Should the Service Provider fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the IFA, the State, or the Service Provider as a result of such failure to proceed shall be borne by the Service Provider.
- C. The IFA may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the IFA to the Service Provider of one or more invoices not in dispute in accordance with the terms of this Agreement will not be cause for the Service Provider to terminate this Agreement, and the Service Provider may bring suit to collect these amounts without following the disputes procedure contained herein.

17. Drug-Free Workplace Certification. As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Service Provider hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Service Provider will give written notice to the IFA within ten (10) days after receiving actual notice that the Service Provider or an employee of the Service Provider in the State, 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 Agreement and/or debarment of contracting opportunities with the IFA for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Agreement is in excess of \$25,000.00, the Service Provider hereby further agrees that this

Agreement 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 Service Provider and made a part of the contract or agreement as part of the contract documents.

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

- A. The Service Provider shall not knowingly employ or contract with an unauthorized alien. The Service Provider shall not retain an employee or contract with a person that the Service Provider subsequently learns is an unauthorized alien.

- B. The Service Provider shall require his/her/its subcontractors, who perform work under this Agreement, to certify to the Service Provider that the subcontractor does not knowingly employ or contract with an unauthorized alien. The Service Provider agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

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

- 19. Employment Option.** If the IFA determines that it would be in the IFA's or the State's best interest to hire an employee of the Service Provider, the Service Provider will release the selected employee from any non-competition agreements that may be in effect. This release will be at no cost to the IFA or the State or the employee.
- 20. Force Majeure.** In the event that either party is unable to perform any of its obligations under this Agreement 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 Agreement 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 Agreement.
- 21. Funding Cancellation.** When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, this Agreement 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 Laws.** This Agreement shall be governed, construed, and enforced in accordance with the laws of the State and suit, if any, must be brought in the State of Indiana, County of Marion. The Service Provider specifically consents to this jurisdiction and venue.
- 23. Indemnification.** The Service Provider agrees to indemnify, defend, and hold harmless the IFA and 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 Service Provider and/or its subcontractors, if any, in the performance of this Agreement. The IFA and the State shall **not** provide such indemnification to the Service Provider.
- 24. Independent Service Provider; Workers' Compensation Insurance.** The Service Provider is performing as an independent entity under this Agreement. No part of this Agreement, 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 Service Provider, upon request from the IFA, shall provide all necessary unemployment and workers' compensation insurance for the Service Provider's employees, and a Certificate of Insurance evidencing such coverage prior to starting work under this Agreement.

25. Insurance.

- A. [The Service Provider and its subcontractors (if any) shall secure and keep in force during the term of this Agreement, the following insurance coverages (if applicable), covering the Service Provider for any and all claims of any nature which may in any manner arise out of or result from the Service Provider's performance under this Agreement:**
- 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 IFA or the State. The IFA 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 Agreement.**
 - 2) Automobile liability for owned, non-owned and hired autos with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence. The IFA 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 IFA shall continue for a period of two (2) years after the date of service provided under this Agreement.**
 - 4) Fiduciary Liability is required if the Service Provider is responsible for the management and oversight of various employee benefit plans and programs such as pensions, profit-sharing and savings, among others. These contractors face potential claims for mismanagement brought by plan members. Limits should be no less than \$700,000 per cause of action and \$5,000,000 per occurrence.**
 - 5) Valuable Papers coverage, available under an Inland Marine policy, is required when any plans, drawings, media, data, records, reports, billings and other documents are produced or used under this agreement. Insurance must have limits sufficient to pay for the re-creation and reconstruction of such records.**
 - 6) The Service Provider shall secure the appropriate Surety or Fidelity Bond(s) as required by the state department served or by applicable statute.**
 - 7) The Service Provider, upon request of the IFA, shall provide proof of such insurance coverage by tendering to the undersigned IFA representative, a certificate of insurance prior to the commencement of this Agreement 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 Agreement involve work outside of the State.**
- B. The Service Provider'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 Service Provider.**
 - 3) **The IFA and the State will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the Service Provider in excess of the minimum requirements set forth above. The duty to indemnify the IFA and the State under this Agreement shall not be limited by the insurance required in this Agreement.**
 - 4) **The insurance required in this Agreement, through a policy or endorsement, shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the IFA.**
 - 5) **The Service Provider waives and agrees to require their insurer to waive their rights of subrogation against the IFA and the State.**
- C. Failure to provide insurance as required in this Agreement may be deemed a material breach of contract entitling the IFA to immediately terminate this Agreement. The Service Provider, upon request from the IFA, shall furnish a certificate of insurance and all endorsements to the IFA before commencement of this Agreement.**

26. Key Person(s).

- A.** If both parties have designated that certain individual(s) are essential to the Services offered under the Agreement, the parties agree that should such individual(s) separate employment from the Service Provider during the term of this Agreement for whatever reason, the IFA shall have the right to terminate this Agreement upon thirty (30) days' prior written notice.
- B.** In the event that the Service Provider is an individual, that individual shall be considered a key person and, as such, essential to this Agreement. Substitution of another for the Service Provider shall not be permitted without express written consent of the IFA.
- C.** Nothing in sections A and B, above shall be construed to prevent the Service Provider 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 Service Provider 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 Agreement is _____.

- 27. Licensing Standards.** The Service Provider 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 Service Provider pursuant to this Agreement. The IFA will not pay the Service Provider for any Services performed when the Service Provider or 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 the applicable license, certification, or accreditation, the Service Provider shall notify the IFA immediately and the IFA, at its option, may immediately terminate this Agreement.

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

29. Minority and Women Business Enterprise Compliance. The Service Provider agrees to comply fully with the provisions of the Service Provider's MBE/WBE participation plan. The Service Provider, upon request from the IFA, shall furnish a copy of the Service Provider's MBE/WBE participation plan.

30. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically including IC § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Service Provider covenants that it shall not discriminate against any employee or applicant for employment relating to this Agreement 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 Service Provider 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 Agreement, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the IFA and any applicant or employee of the Service Provider or any subcontractor.

31. Notice to Parties. Whenever any notice, statement or other communication is required under this Agreement, it shall be sent by first- class mail or via a third-party commercial carrier to the following addresses, unless otherwise specifically advised.

A. Notices to the IFA shall be sent to:

Indiana Finance Authority
100 North Senate Avenue
Suite 1275
Indianapolis, IN 46204
Phone: (317) 232-8623
Fax: (317) 234-1338
Attn: Water Program Director

B. Notices to the Service Provider shall be sent to:

[SERVICE PROVIDER NAME]
[SERVICE PROVIDER ADDRESS, PHONE, FAX]
Attn: _____

32. Order of Precedence; Incorporation by Reference; Interpretation. Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order: (1) this Agreement, (2) attachments prepared by the IFA, [(3) RFP#_____, (4) Service Provider's response to RFP#_____,] and (5) attachments prepared by the Service Provider. All attachments, and all documents referred to in this paragraph, are hereby incorporated fully by reference. Any interpretation applied to this Agreement, by the parties hereto, by an arbitrator, court of law, or by any other third party, shall not be made against the IFA solely by virtue of the IFA or its representatives having drafted all or any portion of this Agreement.

33. 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 Service Provider prior to execution of this Agreement, but specifically developed under this Agreement shall be considered "work for hire" and the Service Provider transfers and assigns any ownership claims to the IFA so that all Materials will be the property of the IFA. If ownership interest in the Materials cannot be assigned to the IFA, the Service Provider grants the IFA 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 Service Provider, without the prior written consent of the IFA, is prohibited. During the performance of this Agreement, the Service Provider shall be responsible for any loss of or damage to the Materials developed for or supplied by the IFA and used to develop or assist in the Services provided while the Materials are in the possession of the Service Provider. Any loss or damage thereto shall be restored at the Service Provider's expense. The Service Provider shall provide the IFA full, immediate, and unrestricted access to the Materials and to the Service Provider's work product during the term of this Agreement.
- 34. Penalties/Interest/Attorney's Fees.** The IFA 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 IFA's failure to make prompt payment shall be based solely on the amount of funding originating from the IFA and shall not be based on funding from federal or other sources.
- 35. Progress Reports.** The Service Provider shall submit progress reports to the IFA upon request. The report shall be oral, unless the IFA, 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 IFA that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

36. Renewal Option; Extension Upon Mutual Agreement. This Agreement may be renewed under the same terms and conditions, subject to the approval of the IFA and the Service Provider. The term of the renewed agreement may not be longer than the term of the original Agreement. Notwithstanding anything in the foregoing to the contrary, the term of the Agreement may be extended on the same terms and conditions on a month-to-month basis

upon the expiration of the Initial Term. Any such extension shall be set forth in writing and signed by both parties.

- 37. Severability.** The invalidity of any section, subsection, clause, or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses, or provisions of this Agreement.
- 38. Substantial Performance.** This Agreement shall be deemed to be substantially performed only when fully performed according to its terms and conditions, and any written amendments or supplements.
- 39. Taxes.** The IFA is exempt from most state and local taxes and many federal taxes. The IFA will not be responsible for any taxes levied on the Service Provider as a result of this Agreement.
- 40. Termination at Will.** This Agreement may be terminated, in whole or in part, by the IFA whenever, for any reason, the IFA determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Service Provider 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 Service Provider shall be compensated for Services properly rendered prior to the effective date of termination. The IFA will not be liable for services performed or costs incurred after the effective date of termination. The Service Provider shall be compensated for services herein provided, but in no case shall total payment made to the Service Provider 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.

41. Termination for Default

- A.** Upon thirty (30) days' notice to the Service Provider, the IFA may terminate this Agreement in whole or in part if the Service Provider fails to:
- 1) Correct or cure any breach of this Agreement; the time to correct or cure the breach may be extended beyond thirty (30) days if the IFA 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 Agreement or any extension;
 - 3) Make progress so as to endanger performance of this Agreement; or
 - 4) Perform any of the other provisions of this Agreement.
- B.** If the IFA terminates this Agreement in whole or in part, it may acquire, under the terms and in the manner the IFA considers appropriate, supplies or services similar to those terminated, and the Service Provider will be liable to the IFA for any excess costs for those supplies or services. However, the Service Provider shall continue the work not terminated.
- C.** The IFA shall pay the contract price for completed supplies delivered and Services accepted. The Service Provider and the IFA 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 provisions governing disputes. The IFA may withhold from these amounts any sum the IFA determines to be

necessary to protect the IFA against loss because of outstanding liens or claims of former lien holders.

- D.** The rights and remedies of the IFA in this clause are in addition to any other rights and remedies provided by law, equity, or under this Agreement.
- 42. Travel.** No expenses for travel will be reimbursed unless specifically permitted under the scope of services or consideration provisions. Expenditures made by the Service Provider for travel will be reimbursed at the current rate paid by the IFA, and in accordance with the State of Indiana Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-state travel requests must be reviewed and approved in advance by the IFA both for availability of funds and for appropriateness per Circular guidelines.
- 43. Waiver of Rights.** No right conferred on either party under this Agreement shall be deemed waived, and no breach of this Agreement excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the IFA's review, approval or acceptance of, nor payment for, the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and the Service Provider shall be and remain liable to the IFA in accordance with applicable law for all damages to the IFA caused by the Service Provider's negligent performance of any of the Services furnished under this Agreement.
- 44. Work Standards.** The Service Provider shall execute its responsibilities by following and applying at all times the highest professional, technical guidelines and standards. If, in its sole discretion, the IFA becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Agreement, the IFA may request in writing the replacement of any or all such individuals, and the Service Provider shall grant such request. The Service Provider shall not be entitled to compensation for the time necessary to familiarize replacement personnel with the status of the Services provided and to be provided.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the Service Provider, or that he/she is the properly authorized representative, agent, member or officer of the Service Provider, that he/she has not, nor has any other member, employee, representative, agent, or officer of the Service Provider, 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 Agreement, other than that which appears upon the face of this Agreement.

In Witness Whereof, the Service Provider and the IFA have, through their duly authorized representatives, entered into this Agreement. The parties, having read and understand the foregoing terms of this Agreement, do by their respective signatures dated below hereby agree to the terms thereof.

[SERVICE PROVIDER NAME]:

By: _____
Printed Name: _____
Title: _____
Date: _____

INDIANA FINANCE AUTHORITY:

By: _____
Printed Name: Dan Huge
Title: Public Finance Director of the State of Indiana
Date: _____

Exhibit A

Services

Exhibit B

Rates

Note: Any change in the billing rates stated below, except regular annual adjustments, must be approved by the IFA in writing prior to becoming effective.

Title	Name	Rate
Rates for Ancillary Charges:	Courier:	
	Photocopies:	
	Filing Fees:	