

PROFESSIONAL SERVICES CONTRACT

This Contract ("Contract"), entered into by and between Northwest Indiana Regional Development Authority ("NIRDA") and _____ (the "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

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

Refer to EXHIBIT "A", Proposed Scope of Services.

2. Consideration. The Contractor will be paid up to _____ for performing the duties set forth above. Total remuneration under this Contract shall not exceed _____.

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

4. Access to Records. The Contractor and its subcontractors, if any, shall maintain all timekeeping and expense records pertaining to this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by NIRDA or its authorized designees. A reasonable amount of copies shall be furnished at no cost to NIRDA if requested.

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 NIRDA'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 NIRDA, provided that the Contractor gives written notice (including evidence of such assignment) to NIRDA 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. Assignment of Antitrust Claims. As part of the consideration for the award of this Contract, the Contractor assigns to NIRDA all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.

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

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

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

10. Compliance with Laws.

A. The Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by NIRDA 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 NIRDA as set forth in IC §4-2-6, *et seq.*, IC §4-2-7, *et seq.* and the regulations promulgated thereunder. **If the Contractor has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Contractor shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this contract.** If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Contractor or its agents violate any applicable ethical standards, NIRDA may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

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

D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by NIRDA, and agrees that it will immediately notify NIRDA of any such actions. During the term of such actions, the Contractor agrees that NIRDA 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 NIRDA, and the NIRDA decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that NIRDA may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC §5-17-5.

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

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

H. As required by IC §5-22-3-7:

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

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

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

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

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

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

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

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

11. Condition of Payment. All services provided by the Contractor under this Contract must be performed in accordance with the requirements set forth in the Statement of Work, as determined at the discretion of the undersigned NIRDA representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. NIRDA shall not be required to pay for work found to be inconsistent with this Contract or performed in violation of any federal, state or local statute, ordinance, rule or regulation.

12. Confidentiality of NIRDA 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, other than approved subcontractors with a need to know, without the prior written consent of NIRDA, except as required by law, legal process, or professional standards or as otherwise permitted by this Contract.

13. Continuity of Services.

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

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

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

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

14. Debarment and Suspension.

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

B. The Contractor certifies that it has verified NIRDA 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 NIRDA if any subcontractor becomes debarred or suspended, and shall, at NIRDA's request, take all steps required by NIRDA to terminate its contractual relationship with the subcontractor for work to be performed under

this Contract.

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

16. Disputes.

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

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by NIRDA 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 NIRDA for such costs. against NIRDA.. Within ten (10) working days following notification in writing by either party of the existence of a dispute, then the following procedures shall apply:

C. If the parties are unable to resolve a contract dispute between them after good faith attempts to do so, a dissatisfied party shall submit the dispute to the Commissioner of the Indiana Department of Administration for resolution. The dissatisfied party shall give written notice to the Commissioner and the other party. The notice shall include: (1) a description of the disputed issues, (2) the efforts made to resolve the dispute, and

(1) a proposed resolution. The Commissioner shall promptly issue a Notice setting out documents and materials to be submitted to the Commissioner in order to resolve the dispute; the Notice may also afford the parties the opportunity to make presentations and enter into further negotiations. Within thirty (30) business days of the conclusion of the final presentations, the Commissioner shall issue a written decision and furnish it to both parties. The Commissioner's decision shall be the final and conclusive administrative decision unless either party serves on the Commissioner and the other party, within ten (10) business days after receipt of the Commissioner's decision, a written request for reconsideration and modification of the written decision. If the Commissioner does not modify the written decision within thirty (30) business days, either party may take such other action helpful to resolving the dispute, including submitting the dispute to an Indiana court of competent jurisdiction. If the parties accept the Commissioner's decision, it may be memorialized as a written Amendment to this Contract if appropriate.

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

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

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

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

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

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of: (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will: (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying NIRDA 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 Contractor swears or affirms under the penalties of perjury that the Contractor does not knowingly employ an unauthorized alien. The Contractor further agrees that:

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

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

19. Employment Option. If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-competition agreements that

may be in effect. This release will be at no cost to the State or the employee.

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

21. Funding Cancellation. When the NIRDA 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 NIRDA that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

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

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

24. Indemnification. The Contractor agrees to indemnify, defend, and hold harmless NIRDA, its agents, officials, and employees from all third party claims and suits for death, bodily injury, or damage to tangible property, 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. NIRDA shall not provide such indemnification to the Contractor.

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

26. Information Technology Enterprise Architecture Requirements. If the Contractor provides any information technology related products or services to NIRDA, the Contractor shall comply with all IOT standards, policies and guidelines, which are online at <http://iot.in.gov/architecture/>. The Contractor specifically agrees that all hardware, software and services provided to or purchased by NIRDA 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. NIRDA may terminate this Contract for default if the Contractor fails to cure a breach of this provision within a reasonable time.

27. Insurance.

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

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than \$700,000 per person and \$1,000,000 per occurrence unless additional coverage is required by NIRDA. NIRDA is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.
 2. Automobile liability for non-owned and hired autos with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence.
 3. Errors and Omissions liability with minimum liability limits of \$1,000,000 per claim and in the aggregate. Coverage shall continue for a period of two (2) years after the date of service provided under this Contract.
 4. Fiduciary Liability is required if the Contractor is responsible for the management and oversight of various employee benefit plans and programs such as pensions, profit-sharing and savings, among others. 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 a property 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. RESERVED.
 7. The Contractor shall provide proof of such insurance coverage by tendering to the undersigned NIRDA 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 NIRDA is required if any of the services provided under this Contract involve work outside of Indiana.
- B. The Contractor's insurance coverage must meet the following additional requirements:
1. The insurer must have a certificate of authority or other appropriate authorization to operate in the State in which the policy was issued.
 2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
 3. NIRDA 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 so long as within the limitation of liability set forth in this contract. The duty to indemnify NIRDA under this Contract shall not be limited by the insurance required in this Contract.
 4. The insurance required in this Contract may not be canceled without thirty (30) days' prior written notice to the undersigned. Except with respect to Errors and Omissions insurance, the Contractor waive and agrees to require their insurer to waive their rights of subrogation against NIRDA.
- C. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling NIRDA to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to NIRDA before the commencement of this Contract.

28 Key persons.

- A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree

that should such individual(s) leave their employment during the term of this Contract for whatever reason, the State shall have the right to terminate this Contract upon thirty (30) days' prior written notice.

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

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

Key person(s) to this Contract is/are _____

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

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

31. Minority and Women's Business Enterprises Compliance. If the award of this Contract was based, in part, on the MBE/WBE participation plan or the requirements contained in the NIRDA enabling legislation, the following certified MBE or WBE subcontractors will be participating in this Contract:

MBE/WBE PHONE COMPANY NAME SCOPE OF PRODUCTS and/or SERVICES UTILIZATION DATE PERCENT

A copy of each subcontractor agreement must be submitted to IDOA's MBE/WBE Division within thirty (30) days of the effective date of this Contract. Failure to provide a copy of any subcontractor agreement will be deemed a violation of the rules governing MBE/WBE procurement, and may result in sanctions allowable under 25 IAC 5-7-8. Failure to provide any subcontractor agreement may also be considered a material breach of this Contract. The Contractor must obtain approval from IDOA's MBE/WBE Division before changing the participation plan submitted in connection with this Contract.

The Contractor shall report payments made to MBE/WBE Division subcontractors under this Contract on a monthly basis. Monthly reports shall be made using the online audit tool, commonly referred to as "Pay Audit." MBE/WBE Division subcontractor payments shall also be reported to the Division as reasonably requested and in a format to be determined by Division.

32. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically including IC §22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected

Characteristics”). Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Contract, but nothing in this paragraph shall be construed to imply or establish an employment relationship between NIRDA and any applicant or employee of the Contractor or any subcontractor.

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

33. Notice to Parties. Whenever any notice, statement or other communication is required under this Contract, it shall be sent by first class mail or via an established courier/delivery service to the following addresses, unless otherwise specifically advised.

A. Notices to NIRDA shall be sent to: (Include contact name and/or title, name of agency & address)

B. Notices to the Contractor shall be sent to: (Include contact name and/or title, name of vendor & address)

34. Order of Precedence; Incorporation by Reference. Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) this Contract, (2) attachments. All attachments, and all documents referred to in this paragraph, are hereby incorporated fully by reference.

35. Ownership of Documents and Materials.

A. Upon full and final payment to Contractor under the Contract, Contractor assigns and grants to NIRDA, title in the tangible items specified as deliverables or work product in the Contract or Statement of Work (the “Deliverables”) and any copyright interest in the Deliverables; provided that if and to the extent that any Contractor property is contained in any of the Deliverables (“Contractor Property”), Contractor hereby grants NIRDA, under Contractor’s intellectual property rights in such Contractor Property, a royalty-free, non-exclusive, non-transferable, perpetual license to use such Contractor Property solely in connection with NIRDA’s use of the Deliverables. Contractor acknowledges that it shall obtain no ownership right in Confidential Information of NIRDA. In addition, NIRDA acknowledges and agrees that Contractor shall have the right to retain for its files copies of each of the Deliverables and all information necessary to comply with its contractual obligations and applicable professional standards.

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

36. Payments.

- a. All payments shall be made thirty five (35) days in arrears in conformance with the NIRDA fiscal policies and procedures. 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. NIRDA and the Contractor acknowledge that if the Contractor is being paid in advance for the maintenance of equipment and/ or software. Pursuant to IC §4-13-2-20(b)(14), Contractor agrees that if it fails to perform the maintenance required under this Contract, upon receipt of written notice from NIRDA, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.
- c. Contractor will submit an invoice to NIRDA within thirty (30) days of the end of the month for which the invoice is for. Contractor shall note any changes to scope that may impact the Contractor's ability to meet the contract budget and provide a three (3) month budget projection with each invoice.

37. Penalties/Interest/Attorney's Fees. NIRDA 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 NIRDA's failure to make prompt payment shall be based solely on the amount of funding originating from NIRDA and shall not be based on funding from federal or other sources.

38. Progress Reports. The Contractor shall submit progress reports to NIRDA upon request. The report shall be oral, unless NIRDA, 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 NIRDA that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

39. Public Record. The Contractor acknowledges that NIRDA will not treat this Contract as containing confidential information. Use by the public of the information contained in this Contract shall not be considered an act of the NIRDA.

40. Renewal Option. This Contract may be renewed under the same terms and conditions, subject to the approval of the NIRDA. The term of the renewed contract may not be longer than the term of the original Contract.

41. 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.

42. 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.

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

44. Termination for Convenience. This Contract may be terminated, in whole or in part, by NIRDA, whenever, for any reason, the N I R D A 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. NIRDA 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.

45. Termination for Default.

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

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

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

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

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

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

47. Indiana Veteran’s Business Enterprise Compliance. If the Award of this Contract was based, in part, on the Indiana Veteran’s Business Enterprise (“IVBE”) participation plan. The following IVBE subcontractors will be participating in this Contract:

VBE	PHONE	COMPANY NAME	SCOPE OF PRODUCTS and/or SERVICES	UTILIZATION	DATE	PERCENT
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A copy of each subcontractor agreement shall be submitted to NIRDA within thirty (30) days of the request. Failure to provide any subcontractor agreement may also be considered a material breach of this Contract. The Contractor must obtain approval from NIRDA before changing the IVBE participation plan submitted in connection with this Contract.

The Contractor shall report payments made to IVBE subcontractors under this Contract on a monthly basis. Monthly reports shall be made using the online audit tool, commonly referred to as “Pay Audit.” IVBE subcontractor payments shall also be reported to NIRDA as reasonably requested and in a format to be determined by NIRDA.

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

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

50. State Boilerplate Affirmation Clause. I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted NIRDA's Boilerplate contract clauses (as contained in the *2016 OAG/ IDOA Professional Services Contract Manual*) in any way except for the following clauses which are named below: The boilerplate has been modified so as to apply to a professional service contract for the Northwest Indiana Regional Development Authority.

51. Limitation of Liability. Notwithstanding anything else in this contract to the contrary, including all attachments, the liability of the Contractor on account of any actions, damages, claims, liabilities, costs, expenses or losses in any way arising out of or relating to the services performed under the Contract shall be limited to the amount of fees paid or owing to the Contractor under the Contract. In no event shall the Contractor be liable for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, or losses (including, without limitation, lost profits and opportunity costs). The provisions of this paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss asserted, whether in contract, statute, rule, regulation or tort (including but not limited to negligence) or otherwise, and shall survive contract termination or expiration.

52. Management Decisions. NIRDA acknowledges and agrees that the Contractor's services may include advice and recommendations; but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, NIRDA. The Contractor will not perform management functions or make management decisions for NIRDA.

53. Third Party Usage. NIRDA acknowledges and agrees that any advice, recommendations, information, Deliverables or other work product ("Advice") provided by the Contractor in connection with the services under the Contract is intended for NIRDA's sole benefit and the Contractor does not authorize any party other than NIRDA to benefit from or rely upon such Advice, or make any claims against the Contractor relating thereto. Any such benefit or reliance by another party shall be at such party's sole risk. The Contractor may, in its sole discretion mark such Advice to reflect the foregoing. Notwithstanding any provisions of this contract which could be interpreted to the contrary, Contractor acknowledges the NIRDA obligation and requirement to comply with the provisions of the Indiana Open Records Statute as may be deemed appropriate and applicable to any documents, materials, records and/or reports provided to the NIRDA by the Contractor pursuant to the provisions of this contract.

54. Electronic Communications. Contractor and NIRDA may communicate with one another by electronic mail or otherwise transmit documents in electronic form during the course of this engagement. Each party accepts the inherent risks of these forms of communication (including the security risks of interception or unauthorized access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices). NIRDA agrees that the final hardcopy or electronic version of a document, including a Deliverable, or other written communication that the Contractor transmits to NIRDA shall supersede any previous versions transmitted by the Contractor to NIRDA.

55. Active Spreadsheets and Electronic Files. Contractor may use models, electronic files and spreadsheets with embedded macros created by Contractor to assist Contractor in providing the services under the Contract. If NIRDA requests a working copy of any such model, electronic file or spreadsheet, the Contractor may, at its discretion, make such item available to NIRDA for its internal use only on an as-is basis and such item shall be considered a Deliverable; provided that NIRDA is responsible for obtaining the right to use any third party products necessary to use or operate such item. Contractor retains ownership of and all rights in such models, electronic files, and/or spreadsheets with embedded macros; except for NIRDA data contained therein. Nothing contained in this paragraph shall be deemed to circumvent or otherwise prevent the NIRDA compliance with the disclosure requirements contained in the Indiana Public Record Statute.

56. NIRDA Vendors and Conflicts. RDA is aware that the Contractor may be providing assurance, tax and/or advisory services to potential vendors, investors, or other third parties working with RDA. As RDA identifies potential vendors, investors, or other third parties the Contractor will perform an internal search for any potential client conflicts relating to any of RDA vendors, investors, other third parties identified by RDA as having a role in connection with the Contractor's performance of this Contract. The Contractor will disclose, subject to confidentiality restrictions, to RDA of any conflicts of interest and obtain its consent to proceed with the services or work with RDA to mutually agree on an alternate course of action to mitigate the conflict. The Contractor shall perform this Contract in accordance with applicable professional standards

57. Volume Rebates. Where Contractor is reimbursed for airfare expenses, Contractor's policy is to bill clients the amount incurred at the time the service is purchased. If Contractor subsequently receives a volume rebate or other incentive payment from a vendor relating to airfare expenses, Contractor does not credit such payment to NIRDA. Instead, Contractor applies such payments to reduce its overhead costs, which costs are taken into account in determining Contractor's standard billing rates and certain transaction charges that may be charged to NIRDA.

58. Ability to Contract. NIRDA represents to Contractor that NIRDA has obtained all legal consents necessary to award this contract to Contractor without competition, and that award of this contract is made in accordance with all applicable law, regulations, rules, policies, and requirements.

Non-Collusion and Acceptance

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

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

Contractor:

Northwest Indiana Regional Development Authority:

By: _____

By: _____

Name and Title, Printed

Name and Title, Printed

Date: _____

Date: _____

APPROVED as to Form and Legality

Indiana Attorney General

RDA Legal Counsel

Name and Title, Printed

RDA President & CEO

EXHIBIT A - Proposed Scope of Work for RDA

Date: _____