

PROFESSIONALS AND TECHNICAL SERVICES AGREEMENT

This Agreement is (“Agreement”) is entered into and executed this _____ day of _____, 2010, by and between the Institute for Work and the Economy, an Illinois not-for-profit corporation (the “Institute”), 70 East Lake Street, Suite 1700, Chicago, Illinois 60601, and _____ (the “Contractor”).

RECITALS

The Institute has entered into an agreement (“Minnesota Grant Agreement”) with the State of Minnesota, through its Department of Employment and Economic Development (“Minnesota”), under which Minnesota has granted federal funds to the Institute to act as project manager for the Midwest Regional Innovation Initiative (the “Initiative”).

The goals of the Initiative are to (i) maximize the competitive advantages of the Great Lakes region; (ii) instill a culture of entrepreneurship and investment in research and development; and (iii) establish a virtuous cycle of regional investment and economic growth with workforce development as a lead element.

Pursuant to the Minnesota Grant Agreement, the Institute is empowered to retain qualified individuals/entities in furthering the goals of the Minnesota Grant Agreement and the Initiative.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1. PROJECT SCHEDULE

1.01 Project Schedule.

The Contractor shall provide the Services as defined in Section 2.01(A) and Exhibit A. The Services shall be provided in accordance with the schedule set forth in Exhibit A and in no event later than _____ (“Completion Date”).

1.02 Funding.

Any payments made under this Agreement will be made pursuant to the Minnesota Grant Agreement, and in each case subject to those applicable federal, state, city or other local laws, statutes, ordinances, rules and regulations relating to the use of such funds. The maximum amount (“Maximum Compensation”) to be paid hereunder shall not exceed the amount stipulated in the budget set forth in Exhibit B without an amendment to this Agreement.

ARTICLE 2. DUTIES AND RESPONSIBILITIES OF CONTRACTOR

2.01 Scope of Services.

A. Description of Work

The services which the Contractor shall provide under this Agreement (“Services”) include but are not limited to those described in this Article 2 and in Exhibit A, which Exhibit is attached hereto. The Institute may request, in writing, additional services which are within the general scope of services of this Agreement, but beyond the description of work required pursuant to this section, and all work reasonably necessary to complete such additional services to the standards of performance required by this Agreement. Any additional services require a written modification to this Agreement before the Institute becomes obligated to pay for such additional services.

B. Deliverables

In carrying out its Services, Contractor shall provide Deliverables as set forth in Exhibit A. The Institute reserves the right to reject any and all Deliverables which in the sole judgment of the Institute do not adequately represent the intended level of completion or standard of performance, do not include relevant information or data, or do not include all documents specified in this Agreement or reasonably necessary for the purposes for which the Institute made this Agreement with Contractor or for which the Institute intends to use the Deliverables. Partial or incomplete Deliverables may be accepted for review only when required for a specific and well-defined purpose and when consented to in advance by the Institute. Such Deliverables may not be considered as satisfying the requirements of this Agreement and partial or incomplete Deliverables shall in no way relieve Contractor of its commitments under the Agreement.

2.02 Standard of Performance.

The Contractor shall perform all Services required of it under this Agreement with that degree of skill, care and diligence normally shown by a Contractor performing services of a scope, purpose and magnitude comparable with the nature of the Services to be provided under this Agreement. Contractor shall at all times use its best efforts on behalf of the Institute and to assure timely and satisfactory rendering and completion of its Services. Contractor shall perform all Services in accordance with the terms and conditions of this Agreement and to the satisfaction of the Institute and Minnesota.

Contractor shall assure that all Services which require the exercise of professional skills or judgment shall be accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. Contractor shall remain responsible for the professional and technical accuracy of all Services or Deliverables furnished, whether by Contractor or its subcontractors of any tier (“Subcontractors”), or others on its behalf. All Deliverables shall be prepared in a form and content satisfactory to the Institute and Minnesota and shall be delivered in a timely manner consistent with the requirements of this Agreement.

If Contractor fails to comply with the foregoing standards, Contractor shall perform again, at its own expense, any and all Services required to be performed again as a direct or

indirect result of such failure. Any review, approval, acceptance or payment for any and all of the Services by the Institute shall not relieve Contractor of its responsibility for the professional and technical accuracy of its Services and Deliverables. This provision in no way limits the Institute's rights against Contractor either under this Agreement, at law or in equity.

2.03 Key Personnel.

Contractor shall, immediately upon receiving a fully executed copy of this Agreement, assign and maintain during the term of this Agreement and any extension of it an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, and qualified to perform the Services. Contractor shall include among its staff such Key Personnel and positions as identified in Exhibit A, if any.

2.04 Nondiscrimination.

It shall be an unlawful employment practice for the Contractor (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, or the terms, conditions, or privileges of his employment, because of such individual's race, color, religion, sex, age, handicap or national origin; or (2) to limit, segregate, or classify its employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, age, handicap or national origin.

To the extent applicable, the Contractor, in the performance of the Services, shall comply with all applicable federal, state, and local statutes and regulations related to civil rights, equal employment, discrimination and disabilities. To the extent applicable, the Contractor shall incorporate compliance with the referenced civil rights, equal employment, discrimination and disabilities statutes and regulations into all agreements entered into with any Subcontractor.

In addition and to the extent applicable, the Contractor will comply with the provisions of Minn. Stat. § 181.59 which requires:

Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state of Minnesota, for materials, supplies, or construction shall contain provisions by which the Contractor agrees: (1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; (2) That no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color, (3) That a violation of this section is a misdemeanor; and (4) That this Agreement may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the

Agreement, may be forfeited for a second or any subsequent violation of the terms or conditions of this Agreement

2.05 Insurance.

The Contractor shall not commence performance under this Agreement until they have obtained all the insurance described below and the Institute has approved such insurance. The Contractor shall maintain such insurance in force and effect throughout the term of the contract.

Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:

I. **Workers' Compensation Insurance:** Except as provided below, the Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the Subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the state of Minnesota, Minn. Stat § 176.181, and the state in which the Contractor or Subcontractor is located.

Worker's Compensation Insurance minimum limits are as follows:

\$100,000 — Bodily Injury by Disease per employee;
\$500,000 — Bodily Injury by Disease aggregate; and
\$100,000 — Bodily Injury by Accident.

If Minnesota Statute 176.041 exempts Contractor or any Subcontractor from Workers' Compensation insurance or if the Contractor has no employees in the State of Minnesota, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes the Contractor from the Minnesota Workers' Compensation requirements.

If during the course of the contract the Contractor becomes eligible for Workers' Compensation, the Contractor must comply with the Workers' Compensation Insurance requirements herein and provide the State of Minnesota with a certificate of insurance.

II. **Commercial General Liability Insurance:** The Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under this Agreement whether the operations are by the Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor under the contract.

Insurance minimum limits are as follows:

\$2,000,000 — per occurrence;
\$2,000,000 — annual aggregate; and
\$2,000,000 — annual aggregate — Products/Completed Operations.

The following coverages shall be included:

- A. Premises and Operations Bodily Injury and Property Damage;
- B. Personal and Advertising Injury;
- C. Blanket Contractual Liability; and
- D. Products and Completed Operations Liability.

III. Commercial Automobile Liability Insurance: The Contractor is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this contract, and in case any work is subcontracted the Contractor will require the subcontractor to maintain Commercial Automobile Liability insurance.

Insurance minimum limits are as follows:

\$2,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage.

In addition, the following coverages should be included:

Owned, Hired, and Non-owned Automobile.

IV. [Intentionally Omitted.]

V. Additional Insurance Conditions:

A. The State of Minnesota and the Institute shall be named as additional insured under each policy.

B. Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota and the Institute with respect to any claim arising out of Contractor's performance under this contract;

C. The Contractor's policy(ies) and Certificate(s) of Insurance shall contain a provision that coverage afforded under the policy(ies) shall not be cancelled without at least thirty (30) days advanced written notice to the State of Minnesota and the Institute;

D. Contractor is responsible for payment of Contract related insurance premiums and deductibles;

E. If Contractor is self-insured, a Certificate of Self-Insurance must be attached;

F. Contractor's policy(ies) shall include legal defense fees in addition to its liability policy limits.

G. Contractor shall obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota.

H. The Institute reserves the right to immediately terminate this Agreement if the Contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the contractor. All insurance policies must be open to inspection by the Institute and Minnesota, and copies of policies must be submitted to the Institute and/or Minnesota upon written request.

2.06 Indemnification.

A. Indemnification of the Institute

The Contractor shall indemnify, defend, and hold the Institute, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the Institute, arising from the performance of this Agreement by the Contractor or the Contractor's agents or employees. This clause will not be construed to bar any legal remedies the Contractor may have for the Institute's failure to fulfill its obligations under this Agreement.

B. Indemnification of State of Minnesota

The Contractor shall indemnify, defend, and hold Minnesota, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by Minnesota, arising from the performance of this Agreement by the Contractor or the Contractor's agents or employees.

2.07 Work Products.

A. Government Data Practices. The Contractor, the Institute and Minnesota must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under this Agreement. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. Ch. 13, by either the Contractor, the Institute or Minnesota.

If the Contractor receives a request to release the data referred to in this Clause, the Contractor must immediately notify the Institute who shall contact Minnesota. The Institute will give the Contractor instructions from Minnesota concerning the release of the data to the requesting party before the data is released.

B. Intellectual Property Rights. The Institute and/or Minnesota owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents created and paid for under this contract. Works means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Contractor, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this contract. Works includes "Documents." Documents are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives,

designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Contractor, its employees, agents, or subcontractors, in the performance of this Agreement. The Documents will be the exclusive property of the Institute and/or Minnesota. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be “works made for hire.” The Contractor assigns all right, title, and interest it may have in the Works and the Documents to the Institute and/or Minnesota. The Contractor must, at the request of the Institute and/or Minnesota, execute all papers and perform all other acts necessary to transfer or record the Institute’s and/or Minnesota’s ownership interest in the Works and Documents.

Notwithstanding the foregoing and subject to all applicable limitations and requirements on the granting of rights in the Works and the Documents under the federal law governing the Minnesota Grant Agreement, the Institute and/or Minnesota hereby grant to the Contractor and to the Contractor’s successors, assigns and licensees a non-exclusive, irrevocable, worldwide license to record, distribute, reproduce, use, display, exhibit, publish, prepare derivative works, and otherwise dispose of the Works and Documents anywhere throughout the world, in any medium which exists or which may hereafter be developed, with or without attribution to The Institute and/or Minnesota or others on behalf of The Institute and/or Minnesota, free of any royalty or license fee whatsoever.

C. Obligations

Notification. Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Contractor, including its employees and subcontractors, in the performance of this Agreement, the Contractor will immediately give the Institute written notice thereof, and must promptly furnish the Institute with complete information and/or disclosure thereon.

Representation. The Contractor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the Institute and/or Minnesota, and that, with the exception of the license granted to Contractor in Section 2.07(B), neither Contractor nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Contractor represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. The Contractor will indemnify, defend, to the extent permitted by the Minnesota’s Attorney General, and hold harmless the Institute and Minnesota, at the Contractor’s expense, from any action or claim brought against the Institute and/or Minnesota to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Contractor’s, the Institute’s or Minnesota’s opinion is likely to arise, the Contractor must, at the Institute’s and/or Minnesota’s discretion, either procure for the Institute and/or Minnesota the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of the Institute and Minnesota will be in addition to and not exclusive of other remedies provided by law.

2.08 Records and Audit.

The Contractor shall be responsible for maintaining proper, accurate and complete accounting records of all expenditures for Services and Deliverables, including records demonstrating the eligibility of expenditures for payment out of this Agreement.

Under Minn. Stat. § 16C.05, subd. 5, the Contractor's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by Minnesota for a minimum of six years from the end of this Agreement.

2.09 Publicity and Endorsement.

A. Publicity. Any publicity regarding the subject matter of this Agreement must identify the Institute and Minnesota as the sponsoring agency and must not be released without prior written approval from the Institute. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this contract.

B. Endorsement. The Contractor must not claim that Minnesota endorses its products or services.

2.10 Subcontracts and Assignments.

The Contractor shall not subcontract, assign, delegate or otherwise transfer its interest in all or any part of its rights or obligations under this Agreement or any part hereof, without the express written consent of the Institute and/or Minnesota. The absence of any such written consent shall void the attempted assignment, delegation or transfer and shall be of no effect as to the City. This Agreement and the rights and obligations under it shall not be assignable by either party without the written consent of the other party.

2.11 Data Disclosure.

Under Minn. Stat. § 270C.65, Subd. 3 and other applicable laws, the Contractor consents to disclosure of its social security number and/or federal employer tax identification number to Minnesota and other state and federal agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Contractor to file tax returns, pay delinquent tax liabilities, if any, or pay other state and/or federal liabilities.

2.12 Employee Status.

The Contractor certifies that it and its subcontractors:

1. Comply with the Immigration Reform and Control Act of 1986 (U.S.C. 1101 et. seq.) in relation to all employees performing work in the United States and do not knowingly employ persons in violation of the United States' immigrations laws; and

2. By the date of the performance of Services under this Agreement, Contractor and all its subcontractors have implemented or are in the process of implementing the *E-Verify* program for all newly hired employees in the United States who will perform work on behalf of the Institute.

The Contractor shall obtain certifications of compliance with this section from all subcontractors who will participate in the performance of this Agreement. Subcontractor certifications shall be maintained by the Contractor and made available to the Minnesota upon request. If Contractor or its subcontractors are not in compliance with 1 or 2 above or have not begun or implemented the *E-Verify* program for all newly hired employees performing work under the Agreement, the Institute and/or Minnesota reserves the right to determine what action it may take including, but not limited to, terminating the Agreement.

In addition and to the extent applicable, the Contractor certifies to the Institute and Minnesota that it is in compliance with any federal and/or state statutes and/or regulations regarding outsourcing of work to foreign countries.

ARTICLE 3. TERM OF SERVICES

3.01 Timeliness of Performance.

The Contractor shall use its best efforts to provide the Services and Deliverables within the time limits required under this Agreement or as required from time to time by the Institute. In the performance of this Agreement, time is of the essence.

ARTICLE 4. COMPENSATION

4.01 Budget for Services.

The Contractor has prepared a Budget for Services covering each project or component set forth in the Scope of Services which is contained in Exhibit B attached hereto. The Budget total must equal the Maximum Compensation. To the extent that Contractor is requested to perform additional services pursuant to Section 2.01 of this Agreement or any part of Contractor's Services is terminated, the Contractor shall supplement or revise the Budget by a written amendment. Requests for budget revisions which do not affect the Budget total shall be submitted for review and approval to the Institute.

4.02 Invoices.

The Contractor shall promptly present to the Institute an itemized invoice with any requested or required supporting documentation for the services actually performed under this Agreement. The Institute shall promptly submit to Minnesota the Contractor's invoice and supporting documentation. Invoices must be submitted by the Contractor timely.

4.03 Conditions of Payment.

All services provided by the Contractor under this Agreement must be performed to the Institute's and Minnesota's satisfaction, as determined at the sole discretion of the Institute and

Minnesota, and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Contractor will not receive payment for work found by the Institute and/or Minnesota to be unsatisfactory or performed in violation of federal, state, or local law.

4.04 Federal funds.

Payments under this Agreement will be made from federal funds obtained by Minnesota through Title 1B, CFDA number 17.200 of the Workforce Investment Act of 1998. The Contractor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Contractor's failure to comply with federal requirements.

4.05 Payment.

The Contractor acknowledges that the Institute can not pay the Contractor for services provided hereunder until such time as the Institute has received payment from Minnesota pursuant to the terms of the Minnesota Grant Agreement. As such, the Contractor acknowledges and agrees that the Institute can not provide the Contractor a certain time frame within which the Institute shall pay the Contractor after the Contractor submits its invoices for services.

Notwithstanding the foregoing and as required by Minn. Stat. § 16A.1245, the Institute must pay all Contractor, less any retainage if any, within 10 calendar days of the Institute's receipt of payment from Minnesota for undisputed services provided by the Contractor and must pay interest at the rate of one and one-half percent per month or any part of a month to the Contractor on any undisputed amount not paid on time to the Contractor.

4.06 Non-Appropriation.

Funding for this Agreement is subject to the availability of federal funds, and the appropriation thereof by the state of Minnesota. In the event that no funds or insufficient funds are appropriated by the federal government and/or Minnesota, then the Institute will notify the Contractor of such occurrence and this Agreement shall terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. No payments shall be made or due to Contractor under this Agreement beyond those amounts appropriated and budgeted by Minnesota to fund payments hereunder.

4.07 Cost Overruns.

If the aggregate cost of the work performed under this Agreement exceeds the available funds set forth in Section 1.02 hereof, the Contractor shall be solely responsible for such excess costs, and shall hold the Institute harmless from any and all costs and expenses of completing the Services and Deliverables in excess of funds available under this Agreement.

ARTICLE 5. SPECIAL CONDITIONS

5.01 Warranties and Representations.

The Contractor warrants and represents, as of the date of this Agreement and as of the date of each disbursement of funds hereunder:

A. That it is now and for the term of this Agreement shall remain financially solvent, and able to pay its debts as they mature; that it and each of its employees, agents, Subcontractors of any tier are competent to perform the Services required under this Agreement; that it is legally authorized to execute and perform or cause to be performed this Agreement under the terms and conditions stated herein;

B. That it has carefully examined and analyzed the provisions and requirements of this Agreement; that it understands the nature of the Services and Deliverables required; that from its own analysis it has satisfied itself as to the nature of all things needed for the performance of this Agreement, the general and special conditions, and all other matters which in any way may affect this Agreement or its performance; that the time available to it for such examination, analysis, and preparation was adequate;

C. That the Agreement is feasible of performance in accordance with all of its provisions and requirements and that the Contractor can and shall perform, or cause to be performed, the Services and Deliverables in strict accordance with the provisions and requirements of this Agreement;

D. This Agreement contains all negotiations and agreements between the Contractor and the Institute. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party;

E. That it acknowledges that the Institute, in its selection of the Contractor to perform the Services hereunder, materially relied upon the Contractor's proposal and oral presentation; that the aforesaid information was accurate at the time it was made; that no material changes in it have been nor will be made without the express consent of the Institute; and that the Institute relied on the Contractor's statements and representations that Contractor holds itself to very high standards of quality and professionalism;

F. Contractor understands and agrees that any certification, affidavit or acknowledgment made under oath in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination for default; and,

G. That Contractor shall comply with all applicable state, federal county and other local government law, statute, rule, code, regulation, and/or ordinance now existing or hereinafter in effect which in any manner affects the performance or the terms of the Agreement.

5.02 Independent Contractor.

The Contractor is an independent contractor and the employees of the Contractor are not employees of the Institute or of Minnesota, and are, therefore, not entitled to any benefits

provided employees of the Institute or Minnesota. The Contractor shall be responsible for accounting for the reporting of state and federal income tax and Social Security taxes, if applicable.

ARTICLE 6. DEFAULT, REMEDIES, TERMINATION, OFFSET & SUSPENSION

6.01 Event of Default Defined.

The occurrence of any one or more of the following shall constitute an “event of default” by the Contractor:

A. Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Contractor to the Institute and/or Minnesota.

B. Contractor’s material failure to perform any of its obligations under the Agreement including, but not limited to, the following:

1. Failure to perform the Services and/or Deliverables with sufficient personnel and equipment or with sufficient material to ensure the performance of the Services and/or Deliverables due to a reason or circumstances within Contractor’s reasonable control;

2. Failure to perform the Services in a manner satisfactory to the Institute and/or Minnesota, or inability to perform the Services and/or Deliverables satisfactorily as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;

3. Failure to promptly re-perform within a reasonable time Services and/or Deliverables that were rejected as erroneous or unsatisfactory;

4. Discontinuance of the Services and/or Deliverables for reasons not beyond Contractor’s reasonable control; and

5. Failure to comply with a material term of this Agreement, including but not limited to the provisions concerning insurance and nondiscrimination.

C. The failure of the Contractor to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of the Contractor under this Agreement.

6.02 Remedies.

The Institute, at its sole option, may declare the Contractor in default upon: (a) the Contractor’s failure to cure an event of default within ten (10) calendar days after receipt of notice specifying an event of default which can reasonably be cured in ten (10) days; or (b) the Contractor’s failure to commence diligent efforts to cure an event of default within ten (10) calendar days after receipt of notice specifying an event of default which cannot reasonably be cured within ten (10) calendar days or Contractor’s failure, in the sole judgment of the Institute, to continue such diligent efforts after they are commenced; or (c) the Contractor’s failure to cure an event of default specified in part (b) of this Section within thirty (30) calendar days after receipt of notice specifying the event of default. Whether to declare the Contractor in default is

within the sole discretion of the Institute. Written notification of the default, and any intention of the Institute to terminate this Agreement, shall be provided to the Contractor and such decision shall be final and effective upon the Contractor's receipt, as defined herein, of such notice. Upon the giving of such notice as provided herein, the Contractor must discontinue any Services, unless otherwise directed in the notice, and deliver all materials accumulated in the performance of this Agreement, whether completed or in the process, to the Institute. In such case, the Institute may invoke any or all of the following remedies:

- A. The right to take over and complete the Services or any part thereof as agent for and at the cost of Contractor, either directly or through others. The Contractor shall have, in such event, the right to offset from such cost the amount it would have cost the Institute under the terms and conditions of this Agreement, had Contractor completed the Services.
- B. The right to terminate this Agreement as to any or all of the Services yet to be performed effective at a time specified by the Institute.
- C. The right of specific performance, an injunction or other appropriate equitable remedy.
- D. The right to money damages.
- E. The right to withhold all or any part of Contractor's compensation hereunder.
- F. Any other right or remedy as provided herein, or available at law or in equity.

Notwithstanding anything contained herein to the contrary, any funds provided to Contractor hereunder which are not used or expended in accordance with the terms and conditions of this Agreement shall be refunded to the Institute upon demand.

If the Institute considers it to be in its best interests, it may elect not to declare default or to terminate this Agreement. The parties acknowledge that this provision is solely for the benefit of the Institute and that if the Institute permits the Contractor to continue to provide the Services despite one or more events of default, the Contractor shall in no way be relieved of any of its responsibilities, duties or obligations under this Agreement nor shall the Institute waive or relinquish any of its rights.

The remedies under the terms of the Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any event of default shall impair any such right or power nor shall it be construed as a waiver of any event of default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

6.03 Right to Offset.

Any excess costs incurred by the Institute in the event of termination of this Agreement for default or otherwise resulting from Contractor's performance under the Agreement or in the

event the Institute exercises any of the remedies available to it hereunder, and any credits due to or overpayments made by the Institute may be offset by use of any payment due for Services completed before the termination for default or before the exercise of any remedies. If such amount offset is insufficient to cover those excess costs, Contractor shall be liable for and promptly remit to the Institute the balance upon written demand. This right to offset is in addition to and not a limitation of any other remedies available to the Institute.

6.04 [Intentionally Omitted]

6.05 [Intentionally Omitted]

ARTICLE 7. GENERAL CONDITIONS

7.01 Entire Agreement.

This Agreement, and the exhibits attached hereto, shall constitute the entire agreement between the parties and no other warranties, inducements, considerations, promises, or interpretations shall be implied or impressed upon this Agreement that are not expressly addressed herein and therein.

7.02 Counterparts.

This Agreement is comprised of several identical counterparts, each to be fully executed by the parties and each to be deemed an original having identical legal effect.

7.03 Amendments.

No changes, amendments, modifications, or discharge of this Agreement, or any part thereof, shall be valid unless in writing and signed by the authorized agent of the Contractor and by the Institute. The Institute shall incur no liability for Additional Services without a written amendment to this Agreement pursuant to this Section.

7.04 No Damages for Delay.

The Contractor agrees that it shall make no claims against the Institute for damages, charges, additional costs or fees for any lost profits or costs incurred by reason of delays or hindrances by the Institute in the performance of its obligations under this Agreement.

7.05 Governing Law, Jurisdiction and Venue.

This Agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois. Contractor hereby irrevocably submits itself to the original jurisdiction of those courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. If any action is brought by Contractor against the Institute concerning this Agreement, the action shall only be brought in those courts located within the County of Cook, State of Illinois.

7.06 Severability.

The invalidity of any one or more provision, term, condition, phrase, sentence, clause or section contained in this Agreement shall not affect the remaining portions of this Agreement or any part thereof.

7.07 Interpretation.

Any headings of this Agreement are for convenience of reference only and do not define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of the other genders. Words importing the singular number shall include the plural number and vice versa, unless the context shall otherwise indicate. All references to any exhibit or document shall be deemed to include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms and conditions hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties, and obligations of such persons or entities in accordance with the terms and conditions of this Agreement.

7.08 Assigns.

All of the terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, transferees and assigns.

7.09 Cooperation.

The Contractor agrees at all times to cooperate fully with the Institute and to act in the Institute's best interests. If this Agreement is terminated for any reason, or if it is to expire on its own terms, the Contractor shall make every effort to assure an orderly transition to another Contractor of the Services, if any, orderly demobilization of its own operations in connection with the Services, uninterrupted provision of Services during any transition period and shall otherwise comply with the reasonable requests and requirements of the Institute in connection with the termination or expiration.

7.10 Further Assurances.

The Contractor agrees to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may become necessary or appropriate to carry out the terms, provisions and intent of this Agreement. The Contractor also agrees to complete any documentation required by Minnesota and/or the Institute to complete fiscal and/or program cost justification.

7.11 Disclaimer.

Nothing contained in this Agreement nor any act of the Institute shall be deemed or construed by any of the parties, or by any third person, to create or imply any relationship of third-party beneficiary, principal or agent, limited or general partnership or joint venture, or to create or imply any association or relationship involving the Institute.

7.12 Authority

Execution of this Agreement has been duly authorized by each party.

7.13 Survival of Terms

The following clauses survive the expiration or termination of this Agreement: 2.06 Indemnification; 2.07 Work product; 2.08 Records and Audit; 2.09 Publicity and Endorsement; 2.11 Data Disclosure; and 7.05 Governing Law, Jurisdiction and Venue.

ARTICLE 8. NOTICES

Notices provided for herein, unless expressly provided for otherwise in this Agreement, shall be in writing and may be delivered personally or by placing in the United States mail, first class and certified, return receipt requested, with postage prepaid and addressed as follows:

If to the Institute: Institute for Work and the Economy
 Attn: Peter A. Creticos, Ph.D
 70 East Lake Street, Suite 1700
 Chicago, IL 60601

If to Contractor: _____

Changes in the above-referenced addresses must be in writing and delivered in accordance with the provisions of this Article 8. Notices delivered by mail shall be deemed received three (3) days after mailing in accordance with this Section. Notices delivered personally shall be deemed effective upon receipt.

IN WITNESS WHEREOF, the Institute and Contractor have executed this Agreement on the date first set forth above.

INSTITUTE FOR WORK AND THE ECONOMY

By: _____
Peter A. Creticos
President and Executive Director

THE CONTRACTOR

By:

EXHIBIT A

SCOPE OF SERVICES AND DELIVERABLES

EXHIBIT B
BUDGET FOR SERVICES