

PROFESSIONAL SERVICES AGREEMENT

EDS #: A281-5-IPF-1016

This Professional Services Agreement (“Agreement”) is made and entered into, effective as of April 1, 2015, by and between the Indiana Economic Development Corporation (“IEDC”) and Porter Novelli Public Services (the “Contractor”).

Recitals

WHEREAS, the IEDC and the Indiana Office of Tourism Development (“IOTD”) are closely collaborating on a new reputation enhancement initiative to strengthen Indiana’s global brand reputation as a welcoming place to live, visit and do business;

WHEREAS, with this initiative, the IEDC and the IOTD intend to spur additional economic growth across Indiana by encouraging visitors across Indiana and beyond to visit Indiana’s many vibrant communities and exciting attractions and to continue increasing Hoosier job growth through additional business expansions here in Indiana; and,

WHEREAS, the State of Indiana operates in a competitive environment with other states for economic development and tourism expansion and, as an additional critical part of this initiative, the Contractor has been selected to assist the IEDC and the IOTD.

NOW WHEREFORE, in consideration of the mutual undertakings and covenants set forth herein, the parties hereby agree as follows:

1. SCOPE OF WORK

The services performed by the Contractor will be performed in two separate phases.

(A) *Phase 1 – Design & Development.* Phase 1 shall be from April 1, 2015, to September 30, 2015 and shall include the following services by the Contractor:

- (1) Assessment of the perceptions and expectations of stakeholders that influence and are critical to the reputation of Indiana;
- (2) Meetings with stakeholders to listen and explore ways that the initiative can deliver positive value for Indiana to a broad and diverse audience;
- (3) Development of a campaign positioning and strategic approach that is founded on the assessment and by input from stakeholders, that is aligned with IEDC’s and IOTD’s missions, that is able to reach across a diverse set of audiences, and that will support positive actions to enhance and strengthen Indiana’s reputation; and,
- (4) Development and design of a marketing campaign infrastructure, a core set of communications assets and strategies to support the launch and ongoing execution of the initiative.

The outcome of Phase 1 will be a final set of recommendations, a strategic plan and message platform, and fully developed campaign ready for launch and long-term execution.

(B) *Phase 2 – Launch & Ongoing Implementation.*

- (1) The deliverables from Phase 1 will be the basis for IEDC and IOTD to make a decision on the scale and duration of Phase 2.
- (2) At or near the successful conclusion of Phase 1, the parties expect to execute a written amendment to this Agreement detailing the scope of work, costs, and other terms necessary for the launch and ongoing implementation services to be performed for the IEDC and IOTD in Phase 2. Such amendment shall be subject to the written approval of the parties, the IOTD, and the State Budget Agency.

2. TERM

This Agreement shall commence on April 1, 2015, and shall remain in effect through September 30, 2015, or unless earlier terminated in accordance with the provisions of this Agreement (the “Expiration Date”).

3. CONSIDERATION

- (A) All services performed by the Contractor under this Agreement must be authorized by the IEDC and consistent with the description set forth in Paragraph 1. For the services provided for Phase 1, the Contractor shall be compensated in accordance with Paragraph 4 and the total remuneration shall not exceed 750,000.00.
- (B) All services provided by the Contractor under this Agreement must be performed to the IEDC’s and IOTD’s reasonable satisfaction. The IEDC shall not be required to pay for work found to be unsatisfactory, inconsistent with this Agreement, or performed in violation of federal, state, or local laws.

4. MONTHLY RETAINER & OTHER EXPENSES

- (A) *Monthly Retainer.* A monthly retainer fee of \$50,000.00 will be billed to the IEDC on or about the fifth business day of each month.
- (B) *Costs & Expenses.* The IEDC shall reimburse Contractor for other costs and expenses incurred in providing services hereunder, as follows:
 - (1) *Third Party Expenses.* Where the Contractor uses the services of a third party supplier to provide services to the IEDC, and the Contractor pays for the service on the IEDC’s behalf, the IEDC agrees to pay the Contractor the cost of the supplier services together with the industry standard commission of 17.65%. Depending on the Contractor’s scope of work, these services may include but are not limited to mechanical and art costs (including typography, artwork and comprehensive layouts), news distribution costs (including wire services and mailing houses), audiovisual production costs (including photography, slide and video production), research activities (including market research fees, online database charges, clipping services, and focus group costs), producer’s or packager’s fees, and third party spokesperson fees and expenses.
 - (2) *Media Buys.* Where the Contractor uses the service of media suppliers and the Contractor pays for the media on the IEDC’s and IOTD’s behalf, the IEDC agrees to pay the Contractor the industry standard commission of 15% on those media buys.

- (3) *Other Costs & Expenses.* The Contractor will also bill the IEDC monthly for all other costs and other expenses incurred on the IEDC's behalf including, but not limited to, items such as travel, copying, messengers, press mailings, fax charges, printing, and telephone, at the Contractor's standard rates, which shall be provided to the IEDC upon request.
- (4) *Authorization.* The Contractor will obtain the IEDC's authorization before making any commitments for any cost or expenditure in excess of \$2,500.
- (5) *Taxes.* The IEDC shall pay all applicable taxes on services and materials provided by the Contractor or any third party vendor. The parties will work collaboratively to ensure the IEDC does not incur taxes that would not apply to a governmental entity.
- (6) *Disclosed Agent.* The Contractor is acting as an agent on behalf of the IEDC and IOTD. Therefore, the IEDC agrees that the Contractor will only be liable for the cost of the goods and services purchased and other obligations on the IEDC's behalf to the extent the Contractor has been paid by the IEDC. For amounts not paid, the IEDC will be solely liable to the third party vendor and any terms in the IEDC's invoices, documents or rate cards to the contrary, and any other modifications the IEDC makes to this agreement to the contrary are of no force or effect.

5. PAYMENTS

- (A) All payment obligations shall be made in arrears in accordance with Indiana law and state fiscal policies and procedures, and as required by Indiana Code § 4-13-2-14.8. The Contractor shall authorize, in writing, the direct deposit by electronic funds transfer of all payments by the IEDC. The written authorization must designate a financial institution and an account number to which all payments are to be credited.
- (B) The Contractor shall submit monthly invoices for payment in connection with its services provided hereunder. The IEDC agrees to pay all invoices (not disputed in good faith) within thirty-five (35) days of the invoice date. The Contractor agrees to bill the IEDC in US Dollars, and the IEDC agrees to pay the Contractor in US Dollars. In the unlikely event that the Contractor's invoices remain unpaid for more than sixty (60) days, the Contractor may, at the Contractor's discretion, suspend work and withhold any materials not paid for by the IEDC. In addition, in the event any invoices become overdue, all subsequent payments may, at the Contractor's option, first be applied to those invoices, which are overdue for the longest period of time until all payments are up to date.
- (C) The Contractor shall review each invoice for accuracy and value before the Contractor sends it to the IEDC, and the IEDC shall also promptly review the Contractor's invoices and approve all proper charges for timely payment. If the IEDC cannot approve any portions of the Contractor's invoices, the IEDC agrees to contact the Contractor promptly to discuss the problem. If the IEDC do not inform the Contractor of the IEDC's disapproval of the Contractor's invoices or the overall amount of the Contractor's ongoing charges, the Contractor will continue to provide services in reliance on the IEDC's deemed approval of the Contractor's billings. The IEDC agrees that all of the Contractor's invoices are deemed to be approved seventy-five (75) days after the date of the invoices unless the IEDC has notified the Contractor in writing of the IEDC's disapproval or dissatisfaction.

- (D) The IEDC agrees that during the term of this Agreement, the Contractor shall have the right to require reasonable assurance of the availability of the IEDC's funds in advance of undertaking commitments on the IEDC's behalf. The IEDC agrees to immediately notify the Contractor in the event there is a material adverse change in the IEDC's business or financial condition.

6. THE CONTRACTOR'S SERVICES

- (A) The Contractor shall not commence any additional services or change the scope of services unless and until authorized in writing by the IEDC. No claim for additional compensation or any material change to the budget for the services shall be made.
- (B) The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. The Contractor represents that it has or shall obtain at its own expense all personnel, materials, and equipment required to perform the services under this Agreement. All of the work performed hereunder shall be performed by the Contractor or under its supervision. The Contractor warrants that all personnel assigned to perform the services or other consultants or subcontractors engaged by the Contractor to perform the services are fully qualified and authorized to perform such services under the state and local laws. If the IEDC or IOTD becomes dissatisfied with the work product of, or the working relationship with, any individuals assigned to work under this Agreement, the IEDC may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.
- (C) The IEDC and the IOTD shall, at all reasonable times, have the right to inspect the work, services, or performance of the Contractor. The Contractor shall furnish all reasonable aid and assistance required by the IEDC and the IOTD for proper examination of the work or services. Such inspection shall not relieve the Contractor of any obligation to perform said services in accordance with the law or this Agreement.
- (D) The Contractor recognizes that the services to be performed under this Agreement are vital to the IEDC and the IOTD and must be continued without interruption and that, upon the expiration of the Agreement, a successor may continue them. The Contractor agrees to use its best efforts and cooperation to effect an orderly and efficient transition to a successor to provide the services contemplated hereby. The IEDC shall compensate Contractor for such transitional services at its then-current hourly rate. This Agreement shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written modification thereof.

7. PROGRESS REPORTS

The Contractor shall submit written progress reports to the IEDC and IOTD upon request. The progress reports shall serve the purpose of assuring the IEDC and IOTD that work is progressing in a timely manner, and that completion can be reasonably assured.

8. OWNERSHIP OF DOCUMENTS & MATERIALS

- (A) The Contractor acknowledges and agrees that, upon full payment of all sums due to the Contractor under this Agreement, all photography, brochures, manuals, film, signage, and other materials (collectively referred to as "Materials") generated by the Contractor in accordance with the services provided on IEDC's or the IOTD's behalf shall be deemed a "work made for hire" and shall, between IEDC or IOTD and the Contractor, be the exclusive property of both

the IEDC and IOTD, subject to any third party rights, restrictions, limitations, or other obligations. Notwithstanding the foregoing, IEDC acknowledges that the Contractor retains ownership of (i) all works of authorship created by the Contractor or on behalf of the Contractor prior to or separate from the performance of services under this Agreement, or any enhancements or modifications made during performance, including, but not limited to, the Contractor's generic and business information, tools, methodologies, code, proprietary information/services, media lists, and third party relationships held by the Contractor ("PNPS Tools"); (ii) the Contractor's trade secrets; and, (iii) other information created by the Contractor to perform the services not otherwise constituting Materials.

- (B) Subject to subparagraph (A) of this Paragraph, the Contractor, (i) at the IEDC's request upon or after the termination of this Agreement, shall transfer to the IEDC all the Materials in Contractor's possession prepared for the IEDC or IOTD or provided to the Contractor by the IEDC or IOTD for the services rendered under this Agreement, and (ii) shall provide the IEDC and IOTD full, immediate, and unrestricted access to the work product during the term of this Agreement.
- (C) Use of the Materials, other than related to performance by the Contractor under this Agreement, without the prior written consent of the IEDC or IOTD, as applicable, is prohibited. The Contractor shall take such action as is necessary under law to preserve the IEDC's and IOTD's rights in and to the work product or intellectual property while such property is within the control and/or custody of the Contractor. During the performance of this Agreement, the Contractor shall be responsible for any loss of or damage to the Materials developed for or supplied by the IEDC or the IOTD and used to develop or assist in the services provided while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense.

9. ACCESS TO RECORDS & AUDITS

- (A) Confidential materials provided to the Contractor and retained by the Contractor shall be maintained for a period no longer than two (2) years and, thereafter, either returned to the IEDC or IOTD (at the IEDC's cost) as the IEDC or IOTD directs in writing, or discarded pursuant to the Contractor's then-current document retention policy.
- (B) The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Agreement. The Contractor shall make such materials available at its respective office at all reasonable times during the Agreement period, and for three (3) years from the date of final payment under the Agreement, for inspection by the IEDC or by any other authorized representative of state government. Copies thereof shall be furnished at no cost to the IEDC if requested.
- (C) The Contractor acknowledges that it may be required by the IEDC to submit to an audit of funds paid through this Agreement. Any such audit shall be conducted in accordance with Indiana Code § 5-11-1 *et seq.* and any audit guidelines specified by the IEDC.

10. CONFIDENTIALITY OF INFORMATION

- (A) Contractor and IEDC agree to keep confidential and not to disclose or use for its own benefit or for the benefit of any third party (except as may be required for the performance of services under this Agreement or as may be required by law), any information, documents or materials

which are identified by a party, at the time that they are made available, to be proprietary or confidential.

- (B) The parties also agree that any PNPS Tools (as defined herein) shall be deemed to be confidential information of Contractor.
- (C) The confidentiality obligations in this Paragraph 10, however, shall not extend to any information, documents, or materials that (i) become publicly available without breach of this Agreement, (ii) are received from a third party without restriction, or (iii) are independently developed without reference to information received hereunder from the other party, or (iv) the receiving party is required by law, regulation or court order to disclose confidential information provided that the receiving party will promptly notify the disclosing party in writing prior to making any such disclosure in order to facilitate the disclosing party's seeking a protective order or other appropriate remedy from the appropriate body at its own expense.
- (D) All obligations under this Paragraph 10 shall expire upon the second anniversary of the effective date of expiration or termination of this Agreement.
- (E) The parties acknowledges that the disclosing party may not have an adequate remedy in the event that the receiving party breaches its confidentiality obligations and that the disclosing party may seek an injunction or other similar equitable relief without posting a bond or other similar security requirement.
- (F) The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected data. Therefore, the Contractor promises and assures that data, material, and information disclosed to the Contractor by the IEDC or IOTD for the purpose of this Agreement, and specifically identified as confidential information will not be disclosed to others or discussed with other parties without the prior written consent of the IEDC or IOTD, as applicable.

11. USE OF THE NAME OF THE IEDC, IOTD, & STATE OF INDIANA

The Contractor has not been granted any rights to use the name, trademark, intellectual property, or logos of the IEDC, IOTD, or the State of Indiana, including but not limited to "A State that Works" and "VisitIndiana, (the "Names"). The Contractor agrees that it will not use the Names in any manner, including commercial advertising or as a business reference without the prior written consent of the IEDC (with respect to the IEDC and State of Indiana) or the IOTD (with respect to the IOTD). For any purposes outside those contemplated by this Agreement, and for which the IEDC's, IOTD's, or the State of Indiana's participation will be referenced, the IEDC (with respect to the IEDC and State of Indiana) or the IOTD (with respect to the IOTD) shall have the right of review and approval of the use, disclosure, and the finished product prior to its publication. All such requests shall be made in writing for approval at the sole discretion of the IEDC or IOTD, as applicable.

12. GOVERNING LAW

- (A) This Agreement shall be construed in accordance with, and governed by, the laws of the State of Indiana without regard to principles of choice of law, and suit, if any, must be brought in the State of Indiana. The venue for any court action shall be the circuit or superior court of Marion County, Indiana or the United States District Court for the Southern District of Indiana. The Contractor hereby consents to the personal jurisdiction of Indiana state and federal courts.

- (B) If any section, paragraph, term, condition, or provision of this Agreement is found, by a court of competent jurisdiction, to be invalid or unenforceable, or if any paragraph, term, condition, or provision is found to violate or contravene the laws of the State of Indiana, then the section, paragraph, term, condition, or provision so found will be deemed severed from this Agreement, but all other sections, paragraphs, terms, conditions, and provisions will remain in full force and effect.
- (C) The Contractor understands that this Agreement is a public record subject to request pursuant to Indiana Code § 5-14-3 and its exemptions and acknowledges that the IEDC will, promptly after execution of the Agreement, post this Agreement without redaction on its transparency website, with appropriate notice of the posting. Use by the public of the information contained in this Agreement shall not be considered an act of the IEDC or the State.

13. COMPLIANCE WITH LAWS

- (A) The Contractor agrees to 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 regulations thereunder after execution of this Agreement shall be reviewed by the IEDC and the Contractor to determine whether the provisions of this Agreement require formal modification.
- (B) The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State of Indiana, as set forth in Indiana Code § 4-2-6, Indiana Code § 4-2-7, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the website of the Indiana Inspector General at <http://www.in.gov/ig/>. If the Contractor or its agents violate any applicable ethical standards, the IEDC may, in its sole discretion, terminate this Agreement immediately upon notice to Contractor. In addition, the Contractor may be subject to penalties under Indiana Code § 4-2-6, Indiana Code § 4-2-7, Indiana Code § 35-44-1-3 and under any other applicable laws.
- (C) The Contractor certifies by entering into this Agreement that neither it nor its principal(s) is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana or the IEDC. Further, the Contractor agrees that any payments in arrears and currently due to the State of Indiana or to the IEDC may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until the Contractor is current in its payments and has submitted proof of such payment to the IEDC.
- (D) The Contractor warrants that it has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana, or pending, and agrees that it will immediately notify the IEDC of any such actions. During the term of such actions, the Contractor agrees that the IEDC may delay, withhold, or deny work under any supplement, amendment, change order, or other contractual device issued pursuant to this Agreement.
- (E) If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the IEDC or the State of Indiana or its agencies, and the IEDC decides to delay, withhold, or deny work to Contractor, Contractor may request that it be allowed to continue, or receive work, without delay.

- (F) Any payments that the IEDC may delay, withhold, deny, or apply under this Paragraph shall not be subject to penalty or interest under Indiana Code § 5-17-5.
- (G) The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations applicable in connection with the services provided under this Agreement. Failure to do so is a material breach of the Agreement and grounds for immediate termination of this Agreement and denial of further work with the IEDC. The IEDC shall not be required to reimburse the Contractor for any services performed when Contractor or its employees or subcontractors were not or are not in compliance with such applicable standards, laws, rules or regulations. If licensure, certification or accreditation expires or is revoked, Contractor shall notify the IEDC immediately, and the IEDC, at its option, may immediately terminate this Agreement.
- (H) The Contractor affirms that, if it is an entity described in Title 23 of the Indiana Code, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

14. COMPLIANCE WITH TELEPHONE SOLICITATIONS ACT

As required by Indiana Code § 5-22-3-7: (A) The Contractor and any principals of the Contractor certify that: (1) The Contractor, except for *de minimis* and nonsystematic violations, has not violated the terms of: (a) Indiana Code § 24-4.7 [Telephone Solicitation of Consumers], (b) Indiana Code § 24-5-12 [Telephone Solicitations], or (c) Indiana Code § 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if Indiana Code § 24-4.7 is preempted by federal law; and (2) The Contractor will not violate the terms of Indiana Code § 24-4.7 for the duration of the Agreement, even if Indiana Code § 24-4.7 is preempted by federal law. (B) 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: (1) Except for *de minimis* and nonsystematic violations, has not violated the terms of Indiana Code § 24-4.7 in the previous three hundred sixty-five (365) days, even if Indiana Code § 24-4.7 is preempted by federal law; and (2) Will not violate the terms of Indiana Code § 24-4.7 for the duration of the Agreement, even if Indiana Code § 24-4.7 is preempted by federal law.

15. CONFLICT OF INTEREST

- (A) As used in this Paragraph:
 - (1) “Immediate Family” means the spouse and the unemancipated children of an individual.
 - (2) “Interested Party” means (a) the individual executing this Agreement; (b) An individual who, combined with his immediate family, has an equity interest of one percent (1%) or more of the Contractor, if the Contractor is not an individual; or (c) Any member of the Immediate Family of an individual specified under subdivision (1) or (2).
 - (3) “Commission” means the State Ethics Commission.

- (B) The IEDC may cancel this Agreement without recourse by the Contractor if such cancellation is consistent with an opinion of the Commission or if any Interested Party is (1) an employee of the State or the IEDC; (2) a State officer or special State appointee of the IEDC under Indiana Code § 4-2-6; or (3) a public servant of the IEDC under Indiana Code § 35-44-1.
- (C) The Contractor has an affirmative obligation under this Agreement to disclose to the IEDC when an interested party is or becomes an employee, officer or special state appointee of the State of Indiana. The obligation under this Paragraph 15 extends only to those facts that the Contractor knows or reasonably could know.

16. NONDISCRIMINATION

Pursuant to Indiana Code § 22-9-1-10 and the Civil Rights Act of 1964, the Age Discrimination in Employment Act and the Americans with Disabilities Act, the Contractor and its subcontractors, if any, shall not discriminate against any employee or applicant for employment relating to this Agreement with respect to the hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's race, color, religion, sex, age disability, national origin or ancestry or status as a veteran, or any other characteristic protected by federal, state, or local law. Breach of this covenant may be regarded as a material breach of the Agreement. Acceptance of this Agreement also signifies compliance with applicable federal and state laws and regulations prohibiting the aforementioned discrimination in the provision of services.

17. DRUG-FREE WORKPLACE CERTIFICATION

- (A) The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace during the term of this Agreement. The Contractor will give written notice to the IEDC within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor in the State of Indiana has been convicted of a criminal drug violation occurring in the Contractor's workplace.
- (B) It is further expressly agreed that a false certification or a violation of the certification shall constitute a material breach of this Agreement and shall entitle the IEDC to impose, or may otherwise result in, sanctions against the Contractor including, but not limited to, suspension of Agreement payments, the termination of this Agreement and/or the debarment of the Contractor from doing further business with the IEDC and the State of Indiana for up to three (3) years.
- (C) The Contractor hereby further agrees that this Agreement is expressly subject to the terms, conditions and representations of the following Certification:

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

- (1) Publishing and providing to all of its employees a statement notifying employees 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; and
- (2) Establishing a drug-free awareness program to inform employees about:
 - (a) The Contractor's policy of maintaining a drug-free workplace;

- (b) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (c) The penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace.
- (3) Within thirty (30) days after receiving notice of a drug-related conviction of an employee, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace:
- (a) Take appropriate personnel action against the employee, up to and including termination; or
 - (b) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purpose by a Federal, State or local health, law enforcement, or other appropriate agency; and
- (4) Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs 1 through 3 above.

18. FUNDING CANCELLATION

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, the Agreement shall be cancelled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

19. TERMINATION.

- (A) *Termination.* This Agreement cannot be terminated by either party during the first 90 days of the initial term of this Agreement. After the first 90 days of the initial term of this Agreement, this Agreement may be terminated by either party by giving 90 days' prior written notice to the other party (the "Notice of Termination"). The other party's receipt of the Notice of Termination shall cause a 90-day notification period to begin (the "Notification Period"). During the Notification Period, the rights, duties and responsibilities of the IEDC and the Contractor as the IEDC and the Contractor shall continue in full force and effect, including, but not limited to the IEDC's payment of all fees, hourly charges, expenses and other sums as provided in this Agreement through the effective date of termination.
- (B) *Effect of Termination.* Notwithstanding any provision of this Agreement to the contrary, the IEDC expressly agrees that upon termination of this Agreement, any unpaid fees, charges, expenses and other sums incurred by the Contractor pursuant to this Agreement shall be paid by the IEDC in accordance with the terms of this Agreement. Furthermore, any non-cancelable materials, services, contracts, reservations, or other arrangements the Contractor has properly committed itself to purchase for the IEDC's account, shall be paid for by the IEDC, in accordance with the provisions of this Agreement and the IEDC shall remain contractually obligated to the Contractor for the same. The Contractor agrees to use the Contractor's reasonable efforts to mitigate such liabilities promptly upon written notification from the IEDC.
- (C) *Immediate Termination.* Notwithstanding any provisions of this Agreement to the contrary, either party may immediately terminate this Agreement if (a) a petition under any bankruptcy

law is filed by or against the other party, (b) the other party executes an assignment for the benefit of creditors, (c) a receiver is appointed for the other party's assets, (d) the other party becomes insolvent or takes advantage of any insolvency or any similar statute, and/or (e) the other party breaches a material term of this Agreement provided that in the event of a breach, the breaching party shall have the opportunity to cure such breach within 10 days' notice by the non-breaching party.

20. SUBCONTRACTS & ASSIGNMENT

- (A) The IEDC understands and acknowledge that the Contractor may from time to time delegate or subcontract any portion of its obligations set forth herein to a third party (each, a "Subcontractor").
- (B) The Contractor shall not assign or subcontract the whole or any part of this Agreement without the prior written consent of the IEDC. The Contractor agrees to bind all Subcontractors, successors and assignees to all the terms and conditions of this Agreement. The Contractor shall specifically require each Subcontractor, if any, who has access to the IEDC's confidential information in the course of performing any services to be bound by the confidentiality provisions of this Agreement and, at the IEDC's discretion, to execute a non-disclosure agreement that is satisfactory to the IEDC.
- (C) Notwithstanding the foregoing provisions of this Paragraph 20, Subcontractors shall not include freelancers and vendors engaged by the Contractor to assist in the completion of or provide services incidental, ancillary or supplemental to the Services such as music suppliers, stock houses, shipping companies, the media and other suppliers ("Vendors"); provided however, that public relations firms shall not be considered "Vendors".

21. DEBARMENT & SUSPENSION

- (A) The Contractor certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency, branch of government, or by any department, agency, or political subdivision of the State of Indiana. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management of supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.
- (B) The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Agreement and shall be solely responsible for any recoupment, penalties, or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the IEDC if any subcontractor becomes debarred or suspended, and shall, at the IEDC's request, take all steps required by the IEDC to terminate its contractual relationship with the subcontractor for work to be performed under this Agreement.

22. INDEMNIFICATION

- (A) The Contractor shall indemnify, defend, and hold harmless the IEDC and the IOTD and its agents, officers, employees and representatives against all liabilities, losses, damages or expenses, including reasonable attorneys' fees and costs, which the IEDC, the IOTD, or such

other indemnified party may incur as the result of any third party claim, suit or proceeding brought or threatened against IEDC or IOTD pertaining to the Contractor's negligence or willful misconduct in the performance of its obligations hereunder.

- (B) *Use of Materials.* The IEDC acknowledges and agree that after the Contractor has issued material to the press or to another third party, its use is no longer under the Contractor's control. The Contractor therefore cannot assure or be liable to the IEDC or any third party for the use of any materials by any media, nor that any information published will accurately convey the information provided by the Contractor.
- (C) *Limitation of Liability.* In no event shall either party be liable to the other for any incidental, indirect, consequential, special, or punitive damages, or lost profits, goodwill, savings, or use, of any kind or nature arising out of, or relating to the performance, breach, or termination of this Agreement, whether such damage or loss is foreseeable or not, whether that party has been advised of the possibility thereof or not, and whether such liability is asserted on the basis of contract, tort, or otherwise. In no event shall the Contractor's liability arising out of any services provided hereunder exceed the fees paid for the particular services out of which a claim for liability arose.
- (D) *Third Party Litigation.* In the event the Contractor is called upon to respond to or assist the IEDC, the IEDC's parent, subsidiary and affiliates, including the IOTD, and/or the IEDC's and those entities' employees, officers, directors, shareholders and/or members, in connection with litigation commenced or threatened against the IEDC, the IEDC's parent, subsidiary and affiliates, and the IEDC's and/or those entities' employees, officers, directors, shareholders and/or members, by third parties and the costs of defending such claim is not otherwise required by this Agreement to be indemnified by the Contractor (for example, if the Contractor complies with a document subpoena), the Contractor will be entitled to staff time charges and reimbursement of out-of-pocket expenses (including, but not necessarily limited to reasonable attorney's fees and disbursements) for services rendered to the IEDC, the IEDC's parent, subsidiary and affiliates, and/or the IEDC's and those entities' employees, officers, directors, shareholders and/or members, or time spent by the Contractor in connection with such matters.

23. ATTORNEYS' FEES & INTEREST

Except as otherwise provided in Paragraph 22, the IEDC and the Contractor will in good faith perform their required obligations hereunder and do *not* agree to pay any penalties, liquidated damages, interest, attorneys' fees, court costs, or litigation expenses, except as required by Indiana law, in part, Indiana Code § 5-17-5, Indiana Code § 34-54-8, and Indiana Code § 34-13-1. Notwithstanding the provisions contained in Indiana Code § 5-17-5, the parties stipulate and agree that any liability resulting from the IEDC's failure to make prompt payment shall be based solely on the amount of funding originating from the State of Indiana and shall not be based on funding from federal or other sources.

24. NOTICE TO PARTIES

All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial delivery service, or mailed by registered or certified mail (return receipt requested) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice).

(A) Notices to the IEDC shall be sent to:

INDIANA ECONOMIC DEVELOPMENT CORPORATION
Attn: General Counsel
One North Capitol Avenue, Suite 700
Indianapolis, IN 46204-2288

(B) Notices to the Contractor shall be sent to:

Porter Novelli Public Services
1615 L Street NW, Suite 1150
Washington, DC 20036
Attn: Jennifer Swint

Such notices shall be deemed to have been duly given either three (3) calendar days after the date of mailing as described above or one (1) business day after being received during business hours by an express courier.

25. EMPLOYEE PROTECTION.

The Contractor and the IEDC agree that neither shall directly or indirectly solicit for employment or independent consulting employees of the other party during the term of this Agreement and for a period of six (6) months after the termination, for any cause, of this Agreement. It shall not constitute a breach of the foregoing sentence, however, if either the IEDC or the Contractor (i) makes solicitations for employment by general advertisements in periodicals of broad distribution or (ii) hires any person that responds to a solicitation of the type described in the previous clause (i). If either party ("Recruiting Party") does improperly recruit or solicit an employee during such period described in the first sentence of this paragraph, and as a result the employee becomes a direct employee or independent contractor for the Recruiting Party, the Recruiting Party agrees to pay the party from whom the employee was recruited ("Damaged Party") as liquidated damages a sum equal to 100% of that employee's full base annual salary as of the date of the employee's departure from the Damaged Party, which payment is due within 30 days of the employee's termination, it being agreed that the Damaged Party's damages in the event of such violation might be impossible to ascertain and such amount constitutes a fair and reasonable amount of damages under the circumstances and is not a penalty. Should a Damaged Party resort to legal action to enforce its rights under this provision against the Recruiting Party, the Recruiting Party agrees to reimburse the Damaged party for all reasonable expenses, including attorney's fees and disbursements, incurred in the pursuit of such legal action.

26. CONFLICTS/EXCLUSIVITY.

The parties agree to use reasonable efforts to identify, discuss and seek to resolve any possible conflicting assignments that may have existed prior to, and may arise during, the term of this Agreement. The parties agree that possible solutions to identified conflicting assignments may include, but not necessarily be limited to, separate teams, separate offices, new brands and mutual exclusivity (as a result of, inter alia, exclusivity payments or a commitment from the IEDC that the Contractor will handle the IEDC's business in specific geographic markets). Upon reaching mutually agreeable resolutions to assignments identified by both parties as conflicting assignments, the Contractor shall provide the IEDC with strict written procedures concerning the manner in which the Contractor will undertake such assignments or such other possible resolutions that are mutually agreeable.

27. DISCLOSURE OF ASSOCIATION.

- (A) Except as otherwise necessary for the Contractor to provide the services as described in this Agreement, all media releases, public announcements and public disclosures by either party, or their representatives, employees or agents, relating to this Agreement or the name or the logo of the other party, including, without limitation, promotional or marketing material shall be coordinated with and approved by the other party in writing (E-mail form acceptable) prior to the release thereof.
- (B) Notwithstanding any provision of Paragraph 11 or this Paragraph 27 to the contrary, either party may make disclosures relating to this Agreement or the name or the logo of the other party without consent as required by legal, accounting or regulatory requirements beyond the reasonable control of the releasing party. In the case of the Contractor, the Contractor may, upon the IEDC's or the IOTD's written approval, as applicable, use the IEDC's name or the IEDC's logo or the IOTD's name or the IOTD's logo in the Contractor's general representative lists or roster of clients, and success stories or award shows.

28. CANCELLATION OF PLANS.

The IEDC has the right to modify, reject, cancel or stop any and all plans or work in process; provided, however, that such instructions are delivered to the Contractor in writing and pursuant to the terms of Paragraph 24. The IEDC agrees to reimburse the Contractor for: (i) all costs and expenses the Contractor incurs as a result of the IEDC's change in instructions; (ii) all costs and expenses (including any penalties, kill fees or other damages) the Contractor incurred prior to the IEDC's change in instructions, and which related to non-cancelable contracts or commitments, and, (iii) all costs and expenses the Contractor incurs or incurred which relate to defending, indemnifying and holding the Contractor harmless for any liability relating to the IEDC's change in instructions, including but not limited to any liability arising from third-party claims as a result of the Contractor's breach of one or more agreements with third parties or Subcontractors that the Contractor entered into for the IEDC's benefit and/or behalf. The Contractor agrees to use its best efforts to minimize such costs and expenses. The costs and expenses discussed in this Paragraph 28 are mutually exclusive of the fees discussed in Paragraph 4. The provisions of this Paragraph 28 shall not in any way limit or affect the fees payable to the Contractor pursuant to Paragraph 4.

29. IEDC RESPONSIBILITIES.

The IEDC shall at all times ensure that: (a) it or the IOTD, as applicable, owns all right, title, and interest in, or has full and sufficient authority to use in the manner contemplated by this Agreement, any materials, marks, or data furnished by the IEDC or IOTD, as applicable, to the Contractor; (b) the IEDC or the IOTD, as applicable, complies with the terms and conditions of any licensing or other agreements which govern the use of material licensed or acquired from third parties obtained by the Contractor on the IEDC's or IOTD's, as applicable, behalf; and, (c) the IEDC or the IOTD, as applicable, conducts a trademark search on all marks used by the IEDC in materials prepared by the Contractor to ensure the availability and non-infringement of such marks, even if such marks are suggested or developed by the Contractor.

30. INSURANCE

The Contractor shall secure and keep in force during the term of this Agreement the insurance coverage required by law and as would be reasonable to cover claims of any nature which may arise out of or

result from this Agreement. The Contractor shall, upon request by the IEDC, furnish a certificate of insurance and all endorsements to the IEDC.

31. DISPUTES

- (A) Should any disputes arise with respect to this Agreement, the Contractor and the IEDC 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, and subject to IEDC making all payments due that are not otherwise in dispute under this Agreement, the Contractor will continue, without delay, to carry out all of its responsibilities under this Agreement that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work or services, without delay, any additional costs incurred by the IEDC or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the IEDC for such costs.
- (C) If a party to the Agreement is not satisfied with the progress toward resolving a dispute, the party must notify, in writing, the other party of the dissatisfaction. Upon written notice, the parties have ten (10) working days, unless the parties mutually agree to extend this period, following the notification to resolve the dispute. If the dispute is not resolved within ten (10) working days, the dissatisfied party will submit the dispute in writing according to the following procedure:
 - (1) The parties agree to resolve such matters through submission in writing of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail, or otherwise furnish a copy thereof, to the Contractor and the IEDC within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the parties concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration or mediation for a determination. If a party is not satisfied with the Commissioner's ultimate decision, the dissatisfied party may submit the dispute to an Indiana court of competent jurisdiction.
 - (2) The IEDC may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the IEDC to the Contractor of one or more invoices not in dispute in accordance with the terms of this Agreement will not be cause for the Contractor to terminate this Agreement, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

32. MISCELLANEOUS

- (A) *Non-waiver.* No right conferred on either party under this Agreement shall be deemed waived and no breach of this Agreement excused, unless such waiver or excuse is in writing and signed by the party claimed to have waived such right. Neither the IEDC's review, approval, or acceptance of, nor payment for the services required under this Agreement shall be construed

to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

- (B) *Entire Agreement.* This Agreement is a complete and exclusive statement of the terms of this Agreement and may not be changed orally but only by writing signed by both parties. This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.
- (C) *Counterparts.* This Agreement may be executed through an original or through a facsimile copy, and in duplicates or through counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same Agreement.
- (D) *Relationship of the Parties.* Both parties hereto, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property arising out of the acts or omissions of the agents, employees or subcontractors of the other party.
- (E) *No Third Party Beneficiaries.* Nothing in this Agreement shall be construed to confer any rights or remedies on any third party not a signatory to this Agreement, including, but not limited to, the employees or sub-contractors of the Contractor.
- (F) *Headings.* Headings in this Agreement are for convenience only and are not to be used for interpreting or construing any provisions hereof.
- (G) *Severability.* If any provision of this Agreement is held invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall in no way be affected or impaired thereby.
- (H) *Successors.* This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and permitted assigns.
- (I) *Mutually Negotiated Terms.* Notwithstanding the general rules of construction, the parties acknowledge that both parties were given an equal opportunity to negotiate the terms and conditions contained in this Agreement, and agree that the identity of the drafter of this Agreement is not relevant to any interpretation of the terms and conditions of this Agreement.
- (J) *Force Majeure.* Notwithstanding the deadlines agreed to by the parties from time to time, the Contractor shall not be responsible for any delays or deadlines missed and the Contractor shall not be in default under this Agreement to the extent such delay is caused by factors or forces outside of the Contractor's reasonable control; provided, however, that the Contractor shall promptly inform the IEDC of the reason or reasons for such delay.
- (K) *Survival.* Any provisions which, by their nature, are intended to apply after termination of this Agreement shall survive termination of this Agreement, including but not limited to provisions for payment of amounts owed for work performed under the Agreement, indemnification,

employee protection, confidentiality, retention of materials, ownership of materials, and disclosure of association.

33. AUTHORITY TO BIND CONTRACTOR

Notwithstanding anything in the Agreement to the contrary, the signatory for the Contractor represents that he/she has been duly authorized to execute contracts on behalf of the Contractor and has obtained all necessary or applicable approvals from the home office of the Contractor to make this Agreement fully binding upon the Contractor when his/her signature is affixed and is not subject to home office acceptance hereto when accepted by the IEDC.

34. NON-COLLUSION & ACCEPTANCE

The undersigned attests, subject to the penalties for perjury, 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 Agreement other than that which appears upon the face hereof.

[The remainder of this page is blank.]

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

**PORTER NOVELLI
PUBLIC SERVICES**

By: 
Jennifer Swint, Managing Director

Date: 5-13-15

**INDIANA ECONOMIC DEVELOPMENT
CORPORATION**

By:  (for)
Victor P. Smith, Secretary of Commerce

Digitally signed by Victor P. Smith
DN: cn=Victor P. Smith, o=IEDC,
ou=Secretary of Commerce,
email=vsmith@iedc.in.gov, c=US
Date: 2015.05.14 10:56:42 -0400

Date: _____

Acknowledged by:

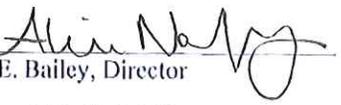
**INDIANA OFFICE OF TOURISM
DEVELOPMENT**

By:  (for)
Mark Newman, Executive Director

Date: 5/13/15

Approved by:

STATE BUDGET AGENCY

By:  (for)
Brian E. Bailey, Director

Date: 5/14/15