

**DEMONSTRATION FUND CONTRACT**

**BY AND BETWEEN**

**ABC COMPANY**

**AND THE**

**IOWA ECONOMIC DEVELOPMENT AUTHORITY**

**CONTRACT NUMBER: 12-DEMO-100**

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**DEMONSTRATION FUND CONTRACT**  
**- Grant -**

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BUSINESS: ABC COMANY  
CONTRACT NUMBER: 12-DEMO-100  
AWARD DATE: AWARD DATE

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This CONTRACT (the “**Contract**”) is made as of the CONTRACT EFFECTIVE DATE by and between the **Iowa Economic Development Authority (“IEDA”)**, 200 East Grand Avenue, Des Moines, IA 50309 and **ABC Company (“Business”), 1234 Any Street, Anytown, IA 50000.**

WHEREAS, the Business submitted an application to IEDA requesting financial assistance in the financing of its Project as more fully described in Exhibit B, Description of the Project and Award Budget, (the “**Project**”); and

WHEREAS, the IEDA found the Project to meet the requirements established to receive financial assistance; and

WHEREAS, the Technology Commercialization Committee (“TCC”) recommended and the Iowa Economic Development Authority Board (“IEDA Board”) have awarded the Business financial assistance from the Demonstration Fund for the Project, subject to the terms and conditions set forth herein and referred to as the “**Award**”; and

NOW THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound, the Business and IEDA agree to the following terms:

**ARTICLE 1**  
**CONTRACT DURATION**

This Contract shall be in effect for a period of 10 years from the Award Date or until all of Business's obligations and liabilities under this Contract have been satisfied, whichever occurs later.

**ARTICLE 2**  
**FUNDING**

2.1 Funding Source. The source of funding for this Award is 2007 Iowa Acts, Chapter 122.

2.2 Reduction, Discontinuance or Alteration of Funding. Any termination, reduction, or delay of funds available due, in whole or in part, to (i) lack of, reduction in, or a deappropriation of revenues previously appropriated by the legislature for this Award, or (ii) any other reason beyond the IEDA’s control may, in the IEDA’s discretion, result in the termination, reduction or delay of funds to the Business.

**ARTICLE 3**  
**DEFINITIONS;**  
**DOCUMENTS INCORPORATED BY REFERENCE; AND ORDER OF PRIORITY**

3.1 Definitions. The following terms apply to this Contract:

***“Award Date”*** means the date first stated in this Contract and is the date the IEDA and/or the IEDA Board approved the awarding of financial assistance to the Business for the Project.

***“Project”*** means the description of the work and activities to be completed by the Business as outlined in Exhibit B, Description of the Project and Award Budget and Exhibit A, Business’s Financial Assistance Application.

***“Project Completion Date”*** means the date three (3) years from the Award Date as stated in Exhibit B, Description of the Project and Award Budget. The Project Completion Date is the date by which all Project activities shall be satisfactorily completed.

3.2 Documents Incorporated by Reference. The following documents are incorporated by reference and considered an integral part of this Contract:

- Exhibit A - Business’s Financial Assistance Application, Application #12-DEMO-011
- Exhibit B - Description of the Project and Award Budget

3.3 Business’s Financial Assistance Application on File. Due to its size, Exhibit A will not be attached to this Contract, but will be kept on file at the Iowa Economic Development Authority. It shall, nevertheless, be considered an incorporated element of this Contract.

3.4 Order of Priority. In the case of any inconsistency or conflict between the specific provisions of this document and the exhibits, the following order of priority shall control:

- (a) Contract, Articles 1-9
- (b) Exhibit B - Description of the Project and Award Budget
- (c) Exhibit A - Business’s Financial Assistance Application

## **ARTICLE 4 AWARD TERMS**

4.1 Description of the Project and Award Budget. The IEDA and/or the IEDA Board have approved an Award to the Business in the amount identified in Exhibit B, Description of the Project and Award Budget.

4.2 Terms of the Grant. Funds have been awarded to the Business to assist with the Project. The terms of the Grant are as follows:

- (a) **\$GRANT AMOUNT**
- (b) This Grant will be repaid in a lump sum; accruing 6% interest from the date of first disbursement should any of the following events occur during the term of this Contract:
  - 1. The business issues an Initial Public Offering (IPO).
  - 2. The business moves the company out-of-state.
  - 3. The business sells 51% or more of the company assets and/or the company.
- (c) List any other grant conditions – **Award funds are not to be allocated for payment to the founders.**

4.3 Terms of the Loan. The Loan shall be awarded to the Business on the following terms and conditions:

- (a) Amount: \$ **LOAN AMOUNT**
- (b) Interest Rate: **INTEREST**%; interest shall accrue from the date of first disbursement of funds.
- (c) Term: **48** months.
- (d) *Promissory Note.* The obligation to repay the Loan shall be evidenced by a Promissory Note executed by the Recipient.
- (e) *Prepayment.* The outstanding principal and accrued interest of this Loan may be prepaid in part or in full at any time without penalty.
- (f) *Acceleration upon Default.* If there is a failure to pay any installment of principal and interest when due, or only a portion is paid, or in the event of any other Event of Default under this Contract, the IEDA may declare the entire unpaid principal and all accrued interest immediately due and payable.

4.4 Additional Special Terms and Conditions. The Recipient shall comply with the additional terms and conditions as a requirement of the Award, or portion thereof, described in this Exhibit: **None.**

## **ARTICLE 5**

### **CONDITIONS TO DISBURSEMENT OF FUNDS; DISBURSEMENT TERMS**

The obligation of IEDA to make, continue or disburse funds under this Contract shall be subject to the following conditions precedent:

5.1 Documents Submitted. IEDA shall have received each of the following documents, properly executed and completed, and approved by IEDA as to form and substance:

- (a) Contract. Fully executed Contract.
- (b) Articles of Incorporation. Copies of the Articles of Incorporation of the Business, certified in each instance by its secretary or assistant secretary.
- (c) Certificate of Corporate Existence. A Certificate of Existence for the Business from the Office of the Secretary of State of Iowa.
- (d) Other Required Documents. IEDA shall have received such other contracts, instruments, documents, certificates and opinions as the IEDA may reasonably request.
- (e) Hazardous Waste Audit. To comply with Iowa Code section 15A.1(3)"b," if the Business generates solid or hazardous waste, it must either: a) submit a copy of the Business's existing in-house plan to reduce the amount of waste and safely dispose of the waste based on an in-house audit conducted within the past 3 years; or b) submit an outline of a plan to be developed in-house, or 3) submit documentation that the Business has authorized the Iowa Department of Natural Resources or Iowa Waste Reduction Center to conduct the audit.

- (f) Satisfactory Credit History. Documentation of satisfactory credit history of the Business with no judgments or unsatisfied liens or similar adverse credit actions.
- (g) Documentation of Required Match. The Business shall have submitted documentation acceptable to IEDA to prove that it has met the two-to-one match requirement.

5.2 Prior Costs. No expenditures made prior to the Award Date may be included as Project costs.

5.3 Cost Variation. In the event that the total Project cost is less than the amount specified in the Exhibit B shall be reduced at the same ratio to the total Project cost reduction as the ratio Contract amount to the total amount of funds provided by the Business and all funding sources requiring a proportional reduction of their financial contribution to the Project. Any disbursed excess above the reduced IEDA participation amount shall be returned immediately to IEDA.

5.4 Disbursement of Funds. All disbursement of funds shall be subject to receipt by the Authority of requests for disbursement submitted by the Business. Requests for disbursement shall be in form and content acceptable to the Authority.

(a) The Business shall request disbursement by submitting the request form provided by the Authority (as the same may be modified from time to time by the Authority) to the Authority itemizing Business' total actual allowable expenses, if any. Expenses shall be documented in a manner acceptable to the Authority.

(b) The Authority will review the request and will make the appropriate disbursement of funds.

(c) The disbursement authorized by the Authority will be limited to a pro-rata portion of the Business' allowable expenses for the relevant period.

(d) The full award amount may be released to the Business at the discretion of the Authority if the Business has documented to the satisfaction of the Authority that all non-Authority funding sources for the project have been secured by the Business as required in section 5.1(g).

5.5 Suspension of Disbursement. Upon the occurrence of an Event of Default (as defined in this Contract) by the Business, the IEDA may suspend payments to the Business until such time as the default has been cured to IEDA's satisfaction. Notwithstanding anything to the contrary in this Contract, upon a termination of this Contract on account of an Event of Default by the Business, Business will no longer have the right to receive any disbursements after the effective date of default.

5.6 Investment of Award Proceeds.

(a) In the event that the Award proceeds are not immediately utilized, temporarily idle Award proceeds held by the Business may be invested provided such investments shall be in accordance with State law, including but not limited to the provisions of Iowa Code chapter 12C concerning the deposit of public funds. Interest accrued on temporarily idle Award proceeds held by the Business shall be credited to and expended on the Project prior to the expenditure of other Award proceeds.

(b) All proceeds remaining, including accrued interest, after all allowable Project costs have been paid or obligated shall be returned to the IEDA within thirty (30) days after the Project Completion Date. Within ten (10) days of receipt of a written request from IEDA, Business shall inform the IEDA in writing of the amount of unexpended Award funds in the Business's possession or under the Business's control, whether in the form of cash on hand, investments, or otherwise.

## ARTICLE 6

## REPRESENTATIONS AND WARRANTIES

The Business represents and warrants to IEDA as follows:

6.1 Organization and Qualifications. The Business is duly organized, validly existing and in good standing as a corporation under the state of its incorporation. The Business has full and adequate power to own its property and conduct its business as now conducted, and is duly licensed or qualified and in good standing in each jurisdiction in which the nature of the business conducted by it or the nature of the property owned or leased by it requires such licensing or qualifying, except where the failure to so qualify would not have a material adverse effect on the Business's ability to perform its obligations hereunder.

6.2 Authority and Validity of Obligations. The Business has full right and authority to enter into this Contract. The person signing this Contract has full authority to:

- (a) Sign this Contract on behalf of the Business, and
- (b) Obligate the Business to the performance of each and all of the obligations under the Contract.

The Contract delivered by the Business have been duly authorized, executed and delivered by the Business and constitute the valid and binding obligations of the Business and enforceable against it in accordance with their terms. This Contract and related documents do not contravene any provision of law or any judgment, injunction, order or decree binding upon the Business or any provision of the articles of organization or operating agreement of the Business, contravene or constitute a default under any covenant, indenture or contract of or affecting the Business or any of its properties.

6.3 Use of Proceeds. The Business hereby agrees to use Award proceeds only for the Project and for the activities described in Exhibit B, Description of the Project and Award Budget. Use of Award proceeds shall conform to the Budget for the Project as detailed in Exhibit B.

6.4 Subsidiaries. The Business has no Subsidiaries on the Contract Effective Date.

6.5 Financial Reports. The balance sheet of the Business furnished to IEDA as of the Contract Effective Date, fairly presents its financial condition as at said date in conformity with GAAP applied on a consistent basis. The Business has no contingent liabilities which are material to it, other than as indicated on such financial statements or, with respect to future periods, on the financial statements furnished to IEDA.

6.6 No Material Adverse Change. Since the Award Date, there has been no change in the condition (financial or otherwise) or business prospects of the Business, except those occurring in the ordinary course of business, none of which individually or in the aggregate have been materially adverse. To the knowledge of the Business, there has been no material adverse change in the condition of the Business (financial or otherwise) or the business prospects of the Business

6.7 Full Disclosure; Business's Financial Assistance Application. The statements and other information furnished to the IEDA by Business in its Financial Assistance Application and in connection with the negotiation of this Contract do not contain any untrue statements of a material fact or omit a material fact necessary to make the material statements contained herein or therein not misleading. The IEDA acknowledges that as to any projections furnished to the IEDA, the Business only represents that the same were prepared on the basis of information and estimates it believed to be reasonable.

6.8 Trademarks, Franchises and Licenses. The Business owns, possesses, or has the right to use all necessary patents, licenses, franchises, trademarks, trade names, trade styles, copyrights, trade secrets,



know how and confidential commercial and proprietary information to conduct its businesses as now conducted, without known conflict with any patent, license, franchise, trademark, trade name, trade style, copyright or other proprietary right of any other Person. As used in this Contract, “Person” means an individual, partnership, corporation, association, trust, unincorporated organization or any other entity or organization, including a government or agency or political subdivision thereof.

6.9 Governmental Authority and Licensing. The Business has received all licenses, permits, and approvals of all Federal, state, local, and foreign governmental authorities, if any, necessary to conduct its businesses, in each case where the failure to obtain or maintain the same could reasonably be expected to have a material adverse effect. No investigation or proceeding which, if adversely determined, could reasonably be expected to result in revocation or denial of any material license, permit, or approval is pending or, to the knowledge of the Business threatened.

6.10 Litigation and Other Controversies. There is no litigation or governmental proceeding pending, nor to the knowledge of the Business threatened, against the Business which if adversely determined would result in any material adverse change in the financial condition, Properties, business or operations of the Business, nor is the Business aware of any existing basis for any such litigation or governmental proceeding.

6.11 Good Title. The Business has good and defensible title (or valid leasehold interests) to all of its property as reflected on the most recent balance sheets furnished to the IEDA (except for sales of assets in the ordinary course business).

6.12 Taxes. All tax returns required to be filed by the Business in any jurisdiction have, in fact, been filed, and all taxes, assessments, fees and other governmental charges upon the Business or upon any of its property, income or franchises, which are shown to be due and payable in such returns, have been paid, except such taxes, assessments, fees and governmental charges, if any, as are being contested in good faith and by appropriate proceedings which prevent enforcement of the matter under contest and as to which adequate reserves established in accordance with GAAP have been provided. The Business knows of no proposed additional tax assessment against it for which adequate provisions in accordance with GAAP have not been made on its accounts. Adequate provisions in accordance with GAAP for taxes on the books of the Business have been made for all open years, and for their current fiscal period.

6.13 Other Contracts. The Business is not in default under the terms or any covenant, indenture or contract of or affecting either the Business or any of its properties, which default, if uncured, would have a material adverse effect on its financial condition, properties, business or operations.

6.14 No Default. No Default or Event of Default has occurred or is continuing.

6.15 Compliance with Laws. The Business is in compliance with the requirements of all federal, state and local laws, rules and regulations applicable to or pertaining to the business operations of the Business and laws and regulations establishing quality criteria and standards for air, water, land and toxic or hazardous wastes or substances, non-compliance with which could have a material adverse effect on the financial condition, properties, business or operations of the Business. The Business has not received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental or health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could have a material adverse effect on the financial condition, properties, business or operations of the Business.

6.16 Effective Date of Representations and Warranties. The warranties and representations of this Article are made as of the Contract Effective Date and shall be deemed to be renewed and restated by

the Business at the time each request for disbursement of funds is submitted to the IEDA.

## **ARTICLE 7 COVENANTS**

7.1 Maintain Existence in Iowa. The Business shall at all times preserve and maintain its existence as a corporation in good standing and maintain the Project in Iowa. The Business will preserve and keep in force and affect all licenses, permits, franchises, approvals, patents, trademarks, trade names, trade styles, copyrights and other proprietary rights necessary to the proper conduct of its respective business.

7.2 Performance Obligations. By the Project Completion Date, Business shall complete the Project, make the total investment pledged for the Project and in accordance with the Award Budget as detailed in Exhibit B and comply with all other performance requirements described in this Contract. The Business shall promptly provide IEDA with written notice of any major changes that would impact the success of the Project.

7.3 Maintenance of Properties. The Business shall maintain, preserve and keep its properties in good repair, working order and condition (ordinary wear and tear excepted) and will from time to time make all needful and proper repairs, renewals, replacements, additions and betterments thereto so that at all time the efficiency thereof shall be fully preserved and maintained in accordance with prudent business practices.

7.4 Taxes and Assessments. The Business shall duly pay and discharge all taxes, rates, assessments, fees and governmental charges upon or against it against its properties, in each case before the same become delinquent and before penalties accrue thereon, unless and to the extent that the same are being contested in good faith and by appropriate proceedings and adequate reserves are provided therefore.

7.5 Insurance. The Business shall insure and keep insured in good and responsible insurance companies, all insurable property owned by it which is of a character usually insured by Persons similarly situated and operating like properties against loss or damage from such hazards or risks as are insured by Persons similarly situated and operating like properties; and the Business shall insure such other hazards and risks (including employers' and public liability risks) in good and responsible insurance companies as and to the extent usually insured by Persons similarly situated and conducting similar businesses. The Business will upon request of the IEDA furnish a certificate setting forth in summary form the nature and extent of the insurance maintained pursuant to this Article.

7.6 Required Reports.

(a) Review of Disbursement Requests and Reports. The Business shall prepare, sign and submit disbursement requests and reports as specified in this Contract in the form and content required by IEDA. The Business shall review all disbursement requests and verify that claimed expenditures are allowable costs. The Business shall maintain documentation adequate to support the claimed costs.

(b) Reports. The Business shall prepare, sign and submit the following reports to the IEDA throughout the Contract period:

<u>Report</u>	<u>Due Date</u>
<u>Annual Project Status Report</u> <ul style="list-style-type: none"><li>• The Annual Project Status Report will</li></ul>	July 31 <sup>st</sup> for the period ending June 30th

<p>collect information from the Business about the status of the project. This report will collect data such as project expenditures any changes to the Business's benefits, ownership, structure, or control of the Business, amount of new money from non-governmental sources, any other information required by IEDA.</p> <ul style="list-style-type: none"> <li>• For the duration of this Contract, Business shall include a copy of its tax return for purposes of verifying compliance with the terms of the Grant in Article 4.</li> </ul>	
<p><b><u>End of Project Report</u></b> The End of Project Report will collect information from the Business about the completed Project such as project expenditures any changes to the Business's benefits, ownership, structure, or control of the Business, amount of new money from non-governmental sources, and any other information required by IEDA.</p>	<p>Within 30 days of Project Completion Date</p>

(c) Additional Reports, Financials as Requested by IEDA. The IEDA reserves the right to require more frequent submission of any of the above reports if, in the opinion of the IEDA, more frequent submissions would help improve the Business's Project performance, or if necessary in order to meet requests from the Iowa General Assembly, the Authority of Management or the Governor's office. At the request of IEDA, Business shall submit its annual financial statements completed by an independent CPA, or other financial statements including, but not limited to, income, expense, and retained earnings statements.

7.7 Inspection and Audit. The Business will permit the IEDA and its duly authorized representatives to visit and inspect any of the Business's properties, corporate books and financial records of the Business related to the Project, to examine and make copies of the books of accounts and other financial records of the Business, and to discuss the affairs, finances and accounts of the Business with, and to be advised as to the same by, its officers, and independent public accountants (and by this provision the Business authorizes such accountants to discuss with the IEDA and the IEDA's duly authorized representatives the finances and affairs of the Business) at such reasonable time and reasonable intervals as the IEDA may designate, but at least annually.

7.8 Compliance with Laws.

(a) The Business will comply in all material respects with the requirements of all federal, state and local laws, rules, regulations and orders applicable to or pertaining to its properties or business operations including, but not limited to, all applicable environmental, hazardous waste or substance, toxic substance and underground storage laws and regulations, and the Business will obtain any permits, licenses, buildings, improvements, fixtures, equipment or its property required by reason of any applicable environmental, hazardous waste or substance, toxic substance or underground storage laws or regulations.

(b) The Business shall comply in all material respects with all applicable federal, state, and local laws, rules, ordinances, regulations and orders applicable to the prevention of discrimination in

employment, including the administrative rules of the Iowa Department of Management and the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action.

(c) The Business shall comply in all material respects with all applicable federal, state and local laws, rules, ordinances, regulations and orders applicable to worker rights and worker safety.

(d) The Business shall comply with IEDA's administrative rules for the Demonstration Fund.

7.9 Use of Award Proceeds. The Business will use the Award proceeds extended under this Contract solely for the purposes set forth in Exhibit B.

7.10 Changes in Business Ownership, Structure and Control.

(a) The Business shall not materially change the ownership, structure, or control of the Business if it would adversely affect the Project. This includes, but is not limited to, entering into any merger or consolidation with any person, firm or corporation or permitting substantial distribution, liquidation or other disposal of Business assets directly associated with the Project. Business shall provide IEDA with advance notice of any proposed changes in ownership, structure or control. The materiality of the change and whether or not the change affects the Project shall be as reasonably determined by IEDA.

(b) The Business shall provide IEDA written notice within 10 days of the occurrence of any of the following events identified in Article 4:

1. The business issues an Initial Public Offering (IPO).
2. The business moves the company out-of-state.
3. The business sells 51% or more of the company assets and/or the company.

7.11 Notice of Meetings. The Business shall notify IEDA at least two (2) working days in advance of all meetings of the board of directors at which the subject matter of this Contract or the Project is proposed to be discussed. The Business shall provide IEDA with copies of the agenda and minutes of such meetings and expressly agrees that a representative of IEDA has a right to attend those portions of any and all such meetings where the Project or this Contract are discussed.

7.12 Notice of Proceedings. The Business shall promptly notify IEDA of the initiation of any claims, lawsuits, bankruptcy proceedings or other proceedings brought against the Business which would adversely impact the Project.

7.13 Accounting Records. The Business is required to maintain its books, records and all other evidence pertaining to this Contract in accordance with generally accepted accounting principles and such other procedures specified by IEDA. These records shall be available to IEDA and its designees at places and times designated by IEDA, its internal or external auditors, the Auditor of the State of Iowa, the Attorney General of the State of Iowa and the Iowa Division of Criminal Investigations at all times during the Contract duration and any extensions thereof, and for three (3) full years from the Agreement Expiration Date.

7.14 Restrictions. The Business shall not, without prior written disclosure to IEDA and prior written consent of IEDA, which shall not be unreasonably withheld, directly or indirectly assign, waive or transfer any of Business's rights, powers, duties or obligations under this Contract.

7.15 No Changes in Business Operations. The Business shall not materially change the Project or the nature of the Business and activities being conducted, or proposed to be conducted by Business, as described in the Business's approved application for funding, Exhibit A of this Contract, unless approved in writing by IEDA prior to the change.

7.16 Indemnification. The Business shall indemnify, defend and hold harmless the IEDA, the State of Iowa, its departments, divisions, agencies, sections, commissions, officers, employees and agents from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

- a) Any claim, demand, action, citation or legal proceeding arising out of or resulting from the Project;
- b) Any claim, demand, action, citation or legal proceeding arising out of or resulting from a breach by the Business of any representation or warranty made by the Business in this Contract;
- c) Any claim, demand, action, citation or legal proceeding arising out of or related to occurrences that the Business is required to insure against as provided for in this Contract; and
- d) Any claim, demand, action, citation or legal proceeding which results from an act or omission of the Business or any of their agents in its or their capacity as an employer of a person.

## **ARTICLE 8**

### **EVENTS OF DEFAULT AND REMEDIES**

8.1 Events of Default. Any one or more of the following shall constitute an "*Event of Default*" hereunder:

(a) Noncompliance with Covenants. Default in the observance or performance of any covenant set forth in Article 7, for more than five (5) Business Days; or

(c) Noncompliance with Contract. Default in the observance or performance of any other provision of this Contract; or

(d) Material Misrepresentation. Any representation or warranty made by the Business in this Contract or in any statement or certificate furnished by it pursuant to this Contract, or made in its Financial Assistance Application, or in connection with any of the above, proves untrue in any material respect as of the date of the issuance or making thereof; or

(e) Adverse Change in Financial Condition. Any change shall occur in the financial condition of the Business which would have a material adverse effect on the ability of the Business to perform under this Contract; or

(f) Bankruptcy or Similar Proceedings Initiated. Either the Business shall (1) have entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (2) not pay, or admit in writing its inability to pay, its debts generally as they become due, (3) make an assignment for the benefit of creditors, (4) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its Property, (5) institute any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, or (6) fail to contest in good faith any appointments or proceeding described in Article 8.1(g) below; or

(g) Appointment of Officials. A custodian, receiver, trustee, examiner, liquidator or similar official shall be appointed for either the Business or any substantial part of any of its respective property, or a proceeding described in Article 8.1(f) shall be instituted against either the Business and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period

of sixty (60) days; or

(h) Insecurity. IEDA shall in good faith deem itself insecure and reasonably believes, after consideration of all the facts and circumstances then existing, that the prospect of the Business's satisfaction of the obligations under this Contract or the performance of or observance of the covenants in this Contract is or will be materially impaired.

(i) Failure to Submit Required Reports. The Business fails to submit complete reports by the required due dates as outlined in Article 7.6.

8.2 Default Remedies. When an Event of Default has occurred and is continuing, the IEDA may, by written notice to the Business:

(a) terminate this Contract and all of the obligations of IEDA under this Contract on the date stated in such notice, and

(b) declare the total amount of Award funds disbursed to be forthwith due and payable, including any and all fees, charges and other amounts payable under this Contract. The total amount due shall be and become immediately due and payable without further demand, presentment, protest or notice of any kind.

8.3 Default Interest Rate. If an Event of Default occurs and remains uncured, a default rate of 6% shall apply to repayment of amounts due under this Contract. The default interest rate shall accrue from the first date Award funds are disbursed.

8.4 Expenses. The Business agrees to pay to the IEDA all expenses reasonably incurred or paid by IEDA including reasonable attorneys' fees and court costs, in connection with any Default or Event of Default by the Business or in connection with the enforcement of any of the terms of this Contract.

8.5 Notice of Default and Opportunity to Cure. If IEDA has reasonable cause to believe that an Event of Default has occurred under this Contract IEDA shall issue a written Notice of Default to the Business, setting forth the nature of the alleged default in reasonable specificity, and providing therein a reasonable period time, which shall not be fewer than thirty (30) days from the date of the Notice of Default, in which the Business shall have an opportunity to cure, provided that cure is possible and feasible.

## **ARTICLE 9 MISCELLANEOUS**

9.1 Timely Performance. The parties agree that the dates and time periods specified in this Contract including the timelines established for the Project and more fully described in Exhibit B, are of the essence to the satisfactory performance of this Contract.

9.2 State of Iowa Recognition. If the Project involves construction and there is signage recognizing the financial contributions made to the Project the Business agrees to include the Iowa Economic Development Authority on the list of entities providing assistance. For example, a sign or plaque indicating that the Project was funded in part by an Award from the State of Iowa, Iowa Economic Development Authority.

9.3 Choice of Law and Forum.

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



District Court for the Southern District of Iowa, Central Division.

(b) This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the IEDA, the State of Iowa or its members, officers, employees or agents.

9.4 Governing Law. This Contract and the rights and duties of the parties hereto shall be governed by, and construed in accordance with the internal laws of the State of Iowa without regard to principles of conflicts of laws.

9.5 Contract Amendments. Neither this Contract nor any documents incorporated by reference in connection with this Contract may be changed, waived, discharged or terminated orally, but only as provided below:

(a) *Writing required.* The Contract may only be amended if done so in writing and signed by the Business and IEDA. Examples of situations requiring an amendment include, but are not limited to, time extensions, budget revisions, and significant alterations of existing activities or beneficiaries. No amendment will be valid until approved in writing by IEDA.

(b) *IEDA review.* IEDA will consider whether an amendment request is so substantial as to necessitate reevaluating the IEDA's or IEDA Board's original funding decision. An amendment may be denied by IEDA if it substantially alters the circumstances under which the Project funding was originally approved.

9.6 Notices. Except as otherwise specified herein, all notices hereunder shall be in writing (including, without limitation by fax) and shall be given to the relevant party at its address, e-mail address, or fax number set forth below, or such other address, e-mail address, or fax number as such party may hereafter specify by notice to the other given by United States mail, by fax or by other telecommunication device capable of creating a written record of such notice and its receipt. Notices hereunder shall be addressed:

To the Business:

ABC Company  
John Smith  
1234 Any Street  
Anytown, IA 50000

E-mail: John.Smith@email.com  
Telephone: 555.555.5555  
Facsimile: 555.555.5556

To the IEDA at:

Iowa Economic Development Authority  
Compliance Team  
200 East Grand Avenue  
Des Moines, Iowa 50309

E-mail: compliance@iowa.gov  
Telephone: 515-725-3000  
Facsimile: 515-725-3010

Each such notice, request or other communication shall be effective (i) if given by facsimile, when such facsimile is transmitted to the facsimile number specified in this Article and a confirmation of such

facsimile has been received by the sender, (ii) if given by e-mail, when such e-mail is transmitted to the e-mail address specified in this Article and a confirmation of such e-mail has been received by the sender, (iii) if given by mail, five (5) days after such communication is deposited in the mail, certified or registered with return receipt requested, addressed as aforesaid or (iv) if given by any other means, when delivered at the addresses specified in this Article.

9.7 Headings. Article headings used in this Contract are for convenience of reference only and are not a part of this Contract for any other purpose.

9.8 Final Authority. The IEDA shall have the authority to reasonably assess whether the Business has complied with the terms of this Contract. Any IEDA determinations with respect to compliance with the provisions of this Contract shall be deemed to be final determinations pursuant to Iowa Code Chapter 17A, Iowa Administrative Procedure Act.

9.9 Waivers. No waiver by IEDA of any default hereunder shall operate as a waiver of any other default or of the same default on any future occasion. No delay on the part of the IEDA in exercising any right or remedy hereunder shall operate as a waiver thereof. No single or partial exercise of any right or remedy by IEDA shall preclude future exercise thereof or the exercise of any other right or remedy.

9.10 Counterparts. This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

9.11 Survival of Representations. All representations and warranties made herein or in any other Contract document or in certificates given pursuant hereto or thereto shall survive the execution and delivery of this Contract and the other Contract documents and shall continue in full force and effect with respect to the date as of which they were made until all of Business's obligations or liabilities under this Contract have been satisfied.

9.12 Severability of Provisions. Any provision of this Contract which is unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. All rights, remedies and powers provided in this Contract or any other Contract document may be exercised only to the extent that the exercise thereof does not violate any applicable mandatory provisions of law, and all the provisions of this Contract and any other Contract document are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Contract or any other Contract document invalid or unenforceable.

9.13 Successors and Assigns. This Contract shall be binding upon the Business and its respective successors and assigns, and shall inure to the benefit of the IEDA and the benefit of their respective successors and assigns. The Business may not assign its rights hereunder without the written consent of the IEDA, which consent will not be unreasonably withheld.

9.14 Termination. This Contract can be terminated upon mutual, written agreement of the Business and IEDA.

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



IN WITNESS WHEREOF in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into this Contract and have caused their duly authorized representatives to execute this Contract, effective as of the latest date stated below (the “**Contract Effective Date**”).

**FOR THE IOWA ECONOMIC DEVELOPMENT AUTHORITY:**

BY: \_\_\_\_\_  
Deborah V. Durham, Director                      Date

**FOR THE BUSINESS:**

BY: \_\_\_\_\_  
Signature    Date

\_\_\_\_\_  
Typed Name and Title

## LIST OF EXHIBITS

- Exhibit A - Business's Financial Assistance Application (on file with IEDA),  
Application #12-DEMO-011
- Exhibit B - Description of the Project and Award Budget
- Exhibit C - Promissory Note

## Exhibit A

Business's Financial Assistance Application (on file with IEDA), Application # 12-DEMO-011

**EXHIBIT B**  
**Description of the Project and Award Budget**

**Name of Business:** ABC Company  
**Contract Number:** 12-DEMO-100  
**Award Date:** Award Date  
**Project Completion Date:** Date 3 years from Award Date  
**Effective Through:** Date 10 years from Award Date  
**Project Description:** Project Description

SOURCE OF FUNDS	Amount	USE OF FUNDS	Cost
Demonstration Fund	\$XX,XXX	Description	\$XX,XXX
<b>TOTAL ALL FUNDS</b>	<b>\$XX,XXX</b>	<b>TOTAL ALL USES</b>	<b>\$XX,XXX</b>
Project Reimbursement Ratio: XX.0%			

**EXHIBIT C – PROMISSORY NOTE  
LOAN**

**Recipient: ABC Company**  
**Contract Number: 12-DEMO-100**

**PROMISSORY NOTE**

FOR VALUE RECEIVED, the undersigned promises to pay to the order of the **IOWA ECONOMIC DEVELOPMENT AUTHORITY**, at its office at 200 East Grand, Des Moines, Iowa 50309, the sum of **AWARD AMOUNT (TYPED) DOLLARS (\$AWARD AMOUNT)** with interest thereon at **INTEREST RATE PERCENT (X%)** to be paid as follows:

**LOAN TERM MONTHS (# of MONTHS)** monthly payments of **\$PAYMENT AMOUNT** beginning on the first day of the fourth month from the date Award funds are disbursed. Final payment may vary depending upon dates payments are received.

Interest shall first be deducted from the payment and any balance shall be applied on principal.

Upon default in payment of any interest, or any installment of principal, the whole amount then unpaid shall become immediately due and payable at the option of the holder.

The undersigned, in case of suit on this note, agrees to pay on demand all costs of collection, maintenance of collateral, legal expenses, and attorneys' fees incurred or paid by the holder in collecting and/or enforcing this Note on default.

This note shall be secured by the Security specified in the Contract.

Makers, endorsers and sureties waive demand of payment, notice of non-payment, protest and notice. Sureties, endorsers and guarantors agree to all of the provisions of this note, and consent that the time or times of payment of all or any part hereof may be extended after maturity, from time to time, without notice.

**ABC Company**

By: \_\_\_\_\_

\_\_\_\_\_  
Print or Type Name, Title

Address: **1234 Any Street**  
**Anytown, IA 50000**

Date: \_\_\_\_\_