

## **SECTION II GENERAL PROVISIONS**

### **1. DEFINITION**

For the purpose of this document, the New Jersey Department of Labor and Workforce Development is referred to as the "Department" or "Grantor"; the term "Grantee" refers to a company, agency, organization, or consortium of same which has applied for and been granted funds under the Workforce Development Partnership (WDP) program for customized training services; and "Contractor" or "Subcontractor" refers to any company, agency, organization, individual, or consortium of same retained by the Grantee or Contractor to provide any portion of the customized training services funded under this Agreement.

### **2. ALLOWABLE COSTS**

Funds expended in this project shall be those as stated in the Budget Summary of this contract for the purposes and functions outlined in the approved application and program specifications set forth in this Agreement, unless changed by an approved modification. The Grantee or Contractor shall be entitled only to reimbursement for actual expenses incurred during the contract/grant period or during an approved extension agreed upon by the Grantee or Contractor and the Department, and only in the amount specified in the Budget Summary. All obligations shall be liquidated within three months of the completion of the contract period or an approved extension.

### **3. REPORTING & METHOD OF PAYMENT**

A) Payments to the Grantee or on behalf of the Grantee shall be issued only after the services have been completed according to the schedule specified in this Agreement and upon receipt of the requisite financial and narrative reports and other forms required by the Grantor and upon appropriate certification by the Director of Accounting of the Department.

B) The following documents and reporting instruments are required to be submitted in a form satisfactory to the Department. In its discretion, the Department may request additional reports.

1) Payment Voucher (Form PV 3/93) – In Non-State Agency, this form will be submitted for accrued expenditures on a schedule approved by the Department, with supporting participant enrollment information.

2) A Final Narrative Report shall be submitted by the Grantee within six (6) months of the termination of the Agreement setting

forth the results of providing the customized training services funded under this Agreement.

C) Payments may, at the discretion of the Department, be made either in fixed amounts as determined by the Department to be reasonable to maintain an appropriate level of customized training services or in the form of reimbursement of actually reported expenditures.

### **4. PERFORMANCE**

A) The Grantee assures that performance will be in accordance with, and within the period of, this Agreement and the approved application. The Grantee further agrees to comply with all applicable laws, ordinances, charters, and regulations governing this Agreement, as well as with all assurances and certifications required by the Department. The Grantee is solely responsible for the performance of any Contractor or Subcontractor as stated in a contract or subcontract approved by the Department of Labor. The Grantor will interpret all reports and will decide the acceptability and progress of work performance.

B) The Grantee shall constantly monitor the performance of the grant supported activities to assure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved as applicable and as defined in the approved application and under this Agreement.

C) The Grantee shall inform the Department of the following types of conditions which affect program objectives and performance as soon as they become known: Problems, delays, or adverse conditions which will materially affect the Grantee's ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Department assistance needed to secure satisfactory performance under the Agreement.

D) The Department may periodically make on-site visits to:

1. Review program accomplishments and management control systems;

2. Provide technical assistance as may be required; and

3. Perform fiscal monitoring responsibilities to ensure that funds are being properly expended and in a timely manner.

E) None of the work or services covered by this Agreement shall be contracted or subcontracted out without the prior written approval of

the Grantor. Any work or services contracted or subcontracted out hereunder shall be specified in detail by written contract or subcontract. The Grantee and Contractor agree to impose similar conditions upon any Contractor or Subcontractor to ensure their compliance with all the terms of this agreement. The Grantor retains the authority to review and approve or disapprove all contracts or subcontracts executed to provide the customized training services for which funding is being provided under WDP. At the Grantor's request, the Grantee or Contractor will promptly forward copies of any contracts or subcontracts and fiscal, programmatic, and other material pertaining to said contractor or subcontracts.

F) The Grantee is required to perform pre-assessment and post-assessment on all participating trainees to determine the trainee's skill level before and after the training unless a waiver is approved under extenuating circumstances. The results of the assessments will be a critical element in the performance of a **Literacy (Basic Skills) grant**. For Communications (reading/writing), and Mathematics courses, Grantees are required to use the Test of Adult Basic Education (T.A.B.E) pre-assessment and post-assessment test.

Copies of the pre and post assessments from each participating trainee are required to be submitted by the Grantee in a form satisfactory to the Department. The Department reserves the discretion to request additional reports on the assessments.

## 5. RECORDS

All documents, patents, copyrights, data, studies, surveys, drawings, maps, models, photographs, films, duplicating plates, reports, plans, and any other materials prepared by the Grantee or any Contractor or Subcontractor in connection with the grant are the property of said Grantee, Contractor or Subcontractor. However, the Department retains the authority to review such material for the limited purpose of determining the extent and quality of performance under the grant. Such materials shall be reviewed by the Grantor upon notice given to the Grantee or Contractor and shall promptly be made available to the Grantor for inspection. The Grantor agrees to take all reasonable steps necessary to safeguard the Grantee's, Contractor's, or Subcontractor's proprietary interest in these materials.

### A) Record Retention

The Grantee or Contractor performing under this contract agrees to maintain all records pertinent to all grants, contracts, and agreements including financial, statistical, property, and participant records, and supporting documentation for a period of three years from the termination date of this Agreement. The aforementioned records will be

retained beyond the three years if any litigation or audit is begun or if a claim is instituted involving the grant or agreement covered by the records. In this instance, the records will be retained until the litigation, audit, or claim has been finally resolved. The Grantee or Contractor agrees to insure that Contractors or Subcontractors retain records in accordance with these requirements. Upon termination of the contract between the Grantor and the Grantee, the Grantee shall be responsible for the maintenance and retention of records of any Contractor or Subcontractor unable to retain them.

### B. Access to Records

The Grantor may investigate any matter it deems necessary to determine compliance with the New Jersey Employment and Workforce Development Act, P.L. 1992, C. 43, or any other relevant State laws or regulations. The investigations authorized by this provision must be reasonable and conducted in a manner that minimizes disruption to the Grantee's or Contractor's place of business, and may include examining records (including making certified copies thereof, with the exception of proprietary information), questioning employees, entering any premises onto any site in which any part of a program of the Grantee or Contractor is conducted or in which any of the records of the Grantee, Contractor, or Subcontractor are maintained.

## 6. MODIFICATIONS

Modification to the Agreement will be made in accordance with procedures prescribed by the Grantor effective at the time of submission of the modification.

A) The Grantee or Contractor agrees to submit a written modification for approval prior to changing any budget line item or participant service level that is contained in this Agreement. Also, written modifications will be required for changes in the Training Specifications.

B) The Grantor, Grantee, and Contractor agree to make any changes in this Agreement only through a written modification.

C) All modifications to this Agreement will be appended to and become part of this contract.

## 7. CONFLICTS OF INTEREST

The Grantee or Contractor shall avoid organizational conflicts of interest, and their personnel shall avoid personal conflicts of interest and appearance of conflicts of interest in receiving or awarding financial assistance and in the conduct of procurement activities in accordance with the code of conduct requirements

of financial assistance programs set forth in applicable State laws.

Further, any gratuities in the form of entertainment, gifts, or otherwise offered by the Grantee or Contractor, any agent or representative of the Grantee, to any office or employee of the Department, with a view towards securing this contract or securing favorable treatment with respect to the awarding, amending, or the making of any determination will render the contract voidable at the option of the Department, and may justify further action under applicable State laws.

## **8. MONITORING, EVALUATION, AND AUDIT**

A) The Contractor/Grantee agrees to cooperate with any monitoring, evaluation, and/ or audit conducted by the Grantor or their designees and authorized agents.

B) The Contractor/Grantee will maintain its records and accounts in such a way as to facilitate the preparation of financial statements in accordance with generally accepted accounting principles and the audits thereof, and ensure that Subcontractors/Subgrantees also maintain records, which are auditable. The Contractor/Grantee is responsible for any disallowed costs resulting from any audit exceptions incurred by its own organization or that of its subcontractors.

C) Contractors/Grantees, who are governmental or non-profit organizations and expend over \$300,000 in either State or Federal funds, agree to have an audit conducted which meets the requirements of the Single Audit Act (United States Code Chapter 75 of Title 31), and Federal OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." Government and non-profit organizations expending less than \$300,000 in Federal or State funds but more than \$100,000 in combination of State and Federal funds, agree to have an annual financial audit in accordance with Government Auditing Standards (Yellow Book Standards).

1) To meet these requirements, the Contractor's/Grantee's audit reports must include the auditor's opinion on the Contractor's/Grantee's compliance with the material terms and conditions of State grant agreements, State aid programs, and applicable laws and regulations.

2) Contractor/Grantee audit reports must contain a supplemental schedule of the entity's State grant and State aid financial assistance programs. This schedule must show for each program:

- State Grantor, Department

- Program Title
- State Account Number
- Program Amount (Amount of funds received)
- Program Grant (Contract period)
- Total Disbursements

D) Contractors/Grantees who are for-profit companies and expend more than \$100,000 in State and/or Federal funds agree to have an annual independent audit which includes one of the following:

- A grant specific audit in accordance with Government Auditing standards (Yellow Book), or;

- A financial audit report conducted under generally accepted auditing standards which includes a separate report on compliance with contractual provisions, or;

- A special report applying agreed upon procedures including but not limited to reviewing and testing the cost and expenses incurred for which reimbursement was requested to determine their propriety under the contract; review of the training records which substantiate training was completed in accordance with the contracts.

- The Department reserves the right to accept alternate assurances of contractor/grantee compliance in the event an independent audit cannot be provided.

E) The Department reserves the right to build upon the audit received. Interim audits may be conducted at the discretion of the Department.

F) Contractors/Grantees agree to provide full access to their books and records, and to any audit or review of financial and compliance requirements of the Department.

G) The Contractor/Grantee agrees to comply with cost principles established in OMB Circular A-122, as amended, if a non-profit organization; OMB Circular A-87, as amended, if a State or local government; or OMB Circular A-21, as amended, if an educational institution. These circulars establish government-wide cost principles, including a requirement that salaries and wages charged to this contract be supported by personnel activity reports.

## **9. DISPUTES**

The Grantee or Contractor agrees to attempt to resolve disputes arising from this agreement by administrative process and negotiations in lieu of litigation. The Grantee or Contractor assures performance of this Agreement while any dispute is pending.

Any dispute arising under this grant or Agreement, which is not settled by informal means, shall be decided by the Grantor, who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the Grantee or Contractor. The Grantee or Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. Pending final decision of a dispute hereunder, the Grantee or Contractor shall proceed diligently with the performance under the Agreement.

The dispute resolution mechanism described in this Section 9 is not exclusive and the Grantor, Grantee or Contractor preserves all rights in law and equity to pursue any claims that may arise.

## **10. TERMINATION**

The performance of work under this Agreement may be terminated in whole or in part for either of the following circumstances:

### **A) Termination for Convenience**

Either the Grantor, Grantee or Contractor may request a termination for any reason. The Grantor, Grantee or Contractor shall give 30 days advance notice, in writing, to the other parties to this Agreement of the effective date of such termination. The Grantee or Contractor shall be entitled to receive just and equitable compensation for any services satisfactorily performed hereunder through the date of termination.

### **B) Termination for Cause**

The Grantor may terminate this Agreement when it has determined that the Grantee or Contractor has failed to provide the services specified, or complied with any of the provisions contained in this contract or approved application, or otherwise breached the terms of this Agreement. If the Grantee or the Contractor fails to perform in whole or in part under this Agreement, or fails to make sufficient progress so as to endanger performance, or otherwise breaches the terms of this Agreement, the Grantor will notify the other parties to this Agreement of such unsatisfactory performance or breach in writing. The Grantee or Contractor has ten (10) working days in which to respond with a plan agreeable to the Grantor for correction of the deficiencies. If the Grantee or Contractor does not respond within the appointed time with corrective plans satisfactory to the Grantor, the Grantor will serve a termination notice on the Grantee

and Contractor which will become effective within thirty days (30) days after receipt. In the event of such termination, the grantor shall only be liable for payment for services rendered prior to the effective date of the termination, provided such services are performed in accordance with the provisions of this Agreement and the approved application.

## **11. TERMINATION OR REDUCTION OF FUNDS**

A) The Grantee or Contractor agrees that major changes in this contract, both in terms of program content and funding levels, may be required prior to its implementation or during the term of its operations due to new or revised legislation or regulations. The Grantee or Contractor agrees that any such changes deemed necessary by the Commissioner of Labor shall be immediately incorporated into this grant.

B) Unearned payments under this Agreement may be suspended or terminated upon refusal to accept or satisfy any additional conditions that may be imposed by the Grantor at any time.

## **12. LIABILITY AND INDEMNIFICATION**

The Grantee shall be solely responsible for and shall keep, save, and hold the State of New Jersey harmless from all claims, loss, liability, expense, or damage resulting from all mental or physical injuries or disabilities, including death, to employees or recipients of the Grantee's services or to any other persons, or from any damage to any property sustained in connection with the delivery of the Grantee's services which results from any acts or omissions, including negligence or malpractice, of any of its officers, directors, employees, agents, servants or independent contractors, or from the Grantee's failure to provide for the safety and protection of its employees, whether or not due to negligence, fault, or default of the Grantee. The Grantee's liability under this agreement shall continue after the termination of the agreement with respect to any liability, loss, expense, or damage resulting from acts occurring prior to termination.

## **13. BONDING AND INSURANCE**

The Grantee shall ensure that every officer, director, or employee, who is authorized to act on behalf of the Grantee for the purpose of receiving funds into program accounts or issuing financial documents, checks, or other instruments of payment for payment of costs, is bonded to provide protection against loss.

The normal bonding procedures of the Grantee or Contractor will be maintained.

## **14. PROPERTY**

The Grantee is responsible and accountable for all equipment and property purchased with funds under this Agreement, including purchases made by any Contractor or Subcontractor receiving payments on behalf of the Grantee. A current inventory of such property and equipment, with a value of \$100 or more, shall be maintained by the Grantee. Procedures for property records are outlined in the NJ SDA Guide for Contracting and Property Management, and the Grantee shall follow those procedures. The Grantee agrees to provide the same security and safekeeping measures for property paid for under this contract as the Grantee provides for the same or similar property owned by the Grantee. The Grantee agrees to impose similar conditions upon any Contractor or Subcontractor engaged to provide services under this contract.

#### **15. TRAVEL AND CONFERENCES**

Conferences or seminars conducted by the Grantee or Contractor shall be held at the Grantee's or Contractor's facilities or at public facilities whenever possible.

#### **16. PRICE WARRANTY**

The Grantee and Contractor warrant that the rates quoted for services under this agreement are not in excess of the costs generally charged for the same services performed by the same individuals under other existing contracts or grants.

#### **17. NONDISCRIMINATION**

A) The Grantee or Contractor and the New Jersey Department of Labor and Workforce Development do hereby agree that the provisions of the Americans With Disabilities Act of 1990 (hereafter referred to as "the Act"), which prohibits discrimination on the basis of disability by public entities, and the rules and regulations promulgated pursuant thereto, are made a part of this agreement.

B) The Grantee or Contractor further agrees to conduct all activities in compliance with the provisions of Title VI of the Civil Rights Act, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and the U.S. Department of Labor's regulations at 29 CFR 31, 32, and 34.

C) The Grantee or Contractor shall cooperate with any state or Federal review aimed at determining compliance with nondiscrimination laws and regulations.

D) The Grantee or Contractor shall indemnify, protect, and hold harmless the State, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages of whatever kind, or nature arising out of the alleged violation.

#### **18. CONTRACT CLOSEOUT PROCEDURES**

A) The following definitions shall apply for the purpose of this Section:

1) Contract Closeout. The closeout of a contract is the process by which the Grantor determines that all applicable administrative actions and all required work of the contract have been completed by the Grantee or Contractor.

2) Date of Completion. The date by which all activities under the contract are completed, or the expiration date in the grant award document, or any supplement or amendment thereto.

B) The Grantee shall submit a closeout package within six months, unless otherwise extended by the Grantor, after completion of the contract period or termination of the contract. Closeout forms will be supplied by the Grantor.

In addition, a Final Narrative Report is required after completion of the contract period or termination of the contract. This report will include a summary of the results of program operation, successes, and/or problems and features that can be replicated.

C. The Grantee will, together with the submission of the closeout package, refund to the Grantor any unexpended funds or unobligated (unencumbered) cash advances except such sums as have been otherwise authorized, in writing, by the Grantor to be retained.

D. Within the limits of the contract amount, the Grantor may make a settlement for any upward or downward adjustments of costs after the final reports are received.

E. The Grantee is responsible for those costs found to be disallowed, including those of any Contractor or Subcontractor paid from funds under this grant or contract, and the Grantor retains the right to recover any appropriated amount after fully considering the recommendations on disallowed costs resulting from the final audit, even if a final audit has not been performed prior to the closeout of the contract.

F. The Grantee shall account for any property received from the Grantor or acquired with funds under this grant, including any property received or acquired by a Contractor or Subcontractor under this grant.

#### **19. EXECUTION OF CONTRACT**

This contract shall be signed by an officer authorized to bind the Grantee to provide customized training services under this agreement.

## **20. GENERAL ASSURANCES**

A) The Grantee or Contractor, in conducting all activities under this approved contract, assures and agrees that it will fully comply with the requirements of the New Jersey Employment and Workforce Development Act, P.L. 1992, C. 43, State regulations and directives governing this program.

B) The Grantee or Contractor assures that it will comply with financial, participant, programmatic record keeping and reporting requirements, participant eligibility criteria, and allowable costs specified in State instructions.

C) The Grantee or Contractor assures that it will fully comply with all Federal and State laws regarding child labor, wages, workplace and classroom safety, health standards, and other laws.

D) The Grantee shall be responsible for providing workers' compensation coverage for any worker participating as a trainee in customized training.

E) The Grantee agrees, as an essential condition for receiving funding for customized training services under the Workforce Development Partnership Program, that if it relocates outside of New Jersey within three (3) years following the ending date of the Customized Training contract, the Grantee will promptly notify the Department and refund all money paid to the Grantor, including payments made to any Contractor or Subcontractor on its behalf.

F) The Grantee or Contractor agrees to retain only service providers located in the State of New Jersey to provide the customized training services funded under this Agreement.

G) This Agreement and the incorporated application contain all of the agreements and understandings between the parties. All subsequent changes, amendments, and modifications must be made in accordance with the provisions of this Agreement.

H) If any one or more provisions of this Agreement are finally adjudicated to be unlawful or unenforceable by a court of competent jurisdiction, then this Agreement shall be construed as if such unlawful provisions had not been contained herein.

I) The Grantee agrees, as an essential condition for receiving funding for customized training services under the Workforce Development Partnership Program, to contact and develop a

partnership with their Local One-Stop Career Center. The One-Stop Career Centers offer a wide array of services to the business community including assistance in finding qualified workers, incentives for hiring and retaining certain individuals, and help navigating state and federal government agencies.

## **21. CONSTRUCTION**

This agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Jersey.

## **22. PROVISIONS TO WHICH AGREEMENT IS SUBJECT**

This Agreement is subject to the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., and the availability of WDP funds.