

**1. Notices**

All contract-related notices and payments shall be in writing and shall either be personally delivered, or sent by express delivery service, certified mail, or first class U.S. mail postage pre-paid, and addressed to the contact information outlined in this Agreement.

**2. Funding Availability**

Each disbursement of funds under this Agreement is conditioned on the availability of federal, state and/or local funds and this Agreement is subject to termination due to lack of funds or authorization. When Worksystems is notified of any funding or regulatory changes, Worksystems will provide the CONTRACTOR notice of changes within 30 days of Worksystems' notification.

**3. General Reporting Requirements**

CONTRACTOR shall submit all Financial, I-Trac, Program Performance, and all other reports required by Worksystems in accordance with the specified time frames in this contract. CONTRACTOR shall provide Worksystems access to all records and data necessary to verify or clarify information requested or provided in such reports. Failure to submit reports by specified timeframes or provide adequate substantiation of reports as specified by Worksystems may result in suspension of payments to the CONTRACTOR until such time as all delinquent obligations are fulfilled.

Additionally, if CONTRACTOR fails to comply, Worksystems may take action in accordance with Section 12 Disallowance of Payments.

**4. Program Objectives**

CONTRACTOR must meet program objectives outlined in Statement of Work (Exhibit C), and any additional program objectives outlined in Special Conditions (Exhibit B).

**5. Administrative Capability**

Upon request, CONTRACTOR will provide Worksystems with the most current version of administrative documentation necessary to document capacity and conduct annual monitoring reviews. This may include such documents as:

- A. Annual Audited Financial Statements
- B. Annual Audited Financial Statement with OMB-133 Compliance
- C. Conflict of Interest Policies
- D. Corrective Action Plan(s)
- E. Cost Allocation Plan(s)
- F. Federal Negotiated Indirect Cost Rate
- G. Grievance Policies, Procedures
- H. Management Letter
- I. Personnel Policies
- J. Procurement/Purchasing Policies
- K. Timekeeping Policies
- L. Travel and Expense Policies

**6. Procurement Policies and Procedures**

CONTRACTOR shall comply with the applicable regulations and cost principles outlined in this Agreement, or with its own procurement procedures, whichever is more restrictive.

In compliance with Executive Orders 12876, 12900, 12928 and 13021, CONTRACTOR is strongly encouraged to provide subcontracting opportunities for Historically Black Colleges and Universities, Hispanic Serving Institutions, Tribal Colleges and Universities; and small businesses, minority-owned firms, and women's business enterprises.

**7. Expenditure Restrictions**

**A. Allowable Activities**

CONTRACTOR must use and expend the funds awarded hereby solely to implement the project described in the Statement of Work (Exhibit C), in accordance with the Budget (Exhibit D), and within limitations outlined in Special Conditions (Exhibit B). CONTRACTOR may not use or expend the Contract funds in violation of the limitations and restrictions set forth in this Agreement.

**B. Budget Limitations**

CONTRACTOR shall be paid only within the established Budget (Exhibit D), and the Budget Line Flexibility as defined in Special Conditions (Exhibit B). All costs must be reasonable, necessary, allowable and allocable as defined by Federal and State of Oregon laws and rules, including applicable OMB Circulars; Pass-Through Entity and Worksystems' policies and procedures.

**C. Dual Payment**

CONTRACTOR shall not be compensated twice for costs incurred under this Agreement. Costs may be shared by other sources of funds to achieve the outcomes described in this Agreement, in accordance with generally accepted accounting principles.

**D. Travel Policy**

CONTRACTOR must comply with the requirements of the Federal Travel Regulations for all travel expenditures reimbursed under this Agreement. In the absence of an acceptable CONTRACTOR policy regarding travel costs, the rates and amounts established will comply with subchapter 1 of Chapter 57 of Title 5, United States Code.

**E. Rebates**

The CONTRACTOR agrees to advise Worksystems, in writing, of any forthcoming income resulting from lease/rental rebates or other rebates, interest, credits or any other monies or financial benefits to be received directly or indirectly as a result of or generated by funds under this Contract. Appropriate action shall be taken to proportionately reimburse the Awarding Agency from such income.

**F. Construction, Remodeling, or Renovation**

The funds provided under this Contract must not be spent for construction, remodeling, renovation, or purchase of facilities.

**G. Other Restrictions**

Other expenditure restrictions are outlined in Special Conditions (Exhibit B).

**8. Payment Request Process**

The CONTRACTOR must submit a timely and accurate payment request that includes a completed and signed Worksystems Billing Workbook that reports expenditures by the Service Groups and Line Items; any required supporting documentation, and a CONTRACTOR invoice requesting reimbursement. Additionally, the updated Worksystems Billing Workbook must also be submitted electronically to the Worksystems Administrative Contact (fiscal@worksystems.org) at the time of the payment request.

Upon receipt of the CONTRACTOR'S formal payment request with the required documentation, Worksystems will review the request for accuracy and compliance with the Contract Agreement and will issue payment within 30 days of approval.

CONTRACTOR shall minimize the time elapsing between receipt of funds from this Agreement and the disbursement of these funds in order to maintain a minimum cash balance. Interest earned shall be accounted for as program income. This treatment of interest does not allow the CONTRACTOR to ignore the requirements or intent of these cash management requirements.

Payment shall not be construed as a waiver of Worksystems' right to challenge CONTRACTOR's performance under this Agreement and to seek appropriate legal remedies.

#### 9. Financial Documentation

CONTRACTOR shall retain original expense documentation, including proof of payment and accrued liabilities. Documentation shall include canceled checks, invoices annotated with date paid, check number, annotated receipts, payroll ledgers, and/or accounts payable ledgers and all documentation will have appropriate approval signatures. Documentation of costs which are allocable to more than one line item and/or which are only partially allocable to the Project Budget shall be annotated with amounts allocated to each source.

All direct costs that are charged to this Contract shall be for reasonable and necessary activities relating to the Contract. All costs not charged as a direct cost must be justified by the application of an allowable Indirect Cost Allocation Plan and/or allocation methodology. CONTRACTOR shall maintain written cost allocation plans for all allocated costs charged to this contract. All costs applied to this Contract must be consistent with the requirements of Federal regulations including 2CFR Part 200. All allocation methodologies and costs pertaining to this agreement are subject to Worksystems review and approval before reimbursement through Worksystems.

For participant direct payments, the CONTRACTOR is responsible for documenting payments in accordance with Worksystems policies and procedures.

Copies of all source documentation for expenditures related to this contract including any documentation related to matching or leverage funds must be available to Worksystems upon request. Any additional documentation requirements will be specified in Exhibit B.

#### 10. Financial Management Standards

The CONTRACTOR shall maintain a financial/administrative system which complies with the standards in the most recent versions of appropriate Uniform Administrative Requirements and 2 CFR Part 200. CONTRACTOR shall maintain a separate accounting of funds received and disbursed under this Contract. All accounting for this Contract shall be maintained within the Organization's primary Financial Accounting System.

The CONTRACTOR's financial systems shall allow for effective fiscal and internal controls and accountability for funds, property, and other assets to ensure they are used solely for authorized purposes. CONTRACTOR shall maintain all data elements used in required reports in accordance with established program definitions.

The CONTRACTOR's financial systems will be maintained in accordance with Generally Accepted Accounting Principles and will be in compliance with all legal and contractual requirements.

The CONTRACTOR's financial system shall:

- A. Follow consistent rules for aggregation of detailed data to summary level.
- B. Compare budgeted amounts to actual expenditures including proper charging of costs and cost allocations.

- C. Contain information pertaining to Contract and contract awards, obligations, unobligated balances, assets, liabilities expenditures, income, program income, matching funds, leveraged resources and stand-in costs.
- D. Permit the tracking of funds to a level of expenditure adequate to establish that funds have not been used in violation of the applicable laws and regulations.
- E. Provide the accurate, current, and complete disclosure of all expenditures including but not limited to those from, grants, contracts or agreements.
- F. Show the distribution of Contract-funded personnel time by fund.

#### 11. Financial Audits and Compliance Monitoring

The CONTRACTOR shall adequately evaluate and monitor its own programs on a regular basis and shall establish sufficient internal controls necessary to safeguard against non-compliance, fraud, and abuse.

If it is determined through audit or other means that the CONTRACTOR has violated or permitted violation of the terms or conditions of this Agreement, the CONTRACTOR shall repay to Worksystems the amount of funds directly related to that violation.

##### A. Financial Audits

CONTRACTOR must comply with federal audit requirements found at 2 CFR Part 200.500-521, and Appendix X and XI.

If CONTRACTOR expends an aggregate of \$750,000 or more in federal funds annually, CONTRACTOR must conduct an annual organization-wide financial and compliance audit in accordance with the above federal rules.

Unless specifically authorized by Worksystems in writing, CONTRACTOR shall submit the audit report to Worksystems no later than thirty (30) calendar days after receipt of the report or within one hundred twenty (120) calendar days following the close of the CONTRACTOR'S fiscal year, whichever is sooner. Audits performed under this section are subject to review and resolution by Worksystems or its authorized representative.

The CONTRACTOR shall, in accordance with Worksystems' timelines, be responsible to resolve and respond to any and all issues that relate to audits of activities that are funded through this Agreement.

##### B. Compliance Monitoring

CONTRACTOR will allow federal, State of Oregon and Worksystems staff or their designees to monitor program and administrative compliance via an on-site review.

CONTRACTOR shall, upon request, provide sufficient and appropriate staff time necessary to conduct all ongoing program and administrative monitoring activities, including but not limited to the on-site review, and regular monitoring reporting, including access to all necessary records.

CONTRACTOR shall resolve and respond to any and all issues that relate to the monitoring of the workforce development activities that are funded through this Agreement.

#### 12. Disallowance of Payments

If it is determined through audit, monitoring or other means that the CONTRACTOR has received payments which are questioned under the criteria set forth herein, the CONTRACTOR shall be notified and given the opportunity to justify questioned payments prior to

Worksystems' final determination of disallowed payments. The CONTRACTOR agrees to participate in and be bound by disallowed cost determinations arising out of Worksystems' disallowed cost resolution process.

If a Contract payment is disallowed, CONTRACTOR shall repay the full amount of the disallowance to Worksystems within thirty (30) calendar days of receipt of request, or other time schedule as determined by Worksystems.

Worksystems' failure to either discover or act upon a breach of this Agreement shall in no way relieve the CONTRACTOR of its obligation to repay disallowed costs.

If the CONTRACTOR fails to comply with any of the requirements, terms, or conditions of this Agreement, Worksystems may, at its discretion, suspend, withhold, or disallow all or any portion of amounts otherwise payable under this Agreement

### 13. Records Standards, Access to Records and Record Retention

#### A. Records Standards

The CONTRACTOR agrees to maintain records that will provide accurate, current and complete disclosure of the status of each program, including, but not limited to, participants, financial, and program operations. The books of account and records must be maintained in sufficient detail to permit the Awarding Agency, the Pass-through Entity (if applicable), Worksystems and their duly authorized representatives to verify how the contract funds were expended or utilized. CONTRACTOR shall safeguard and maintain the confidentiality of all program records and documents through proper accounting and program procedures and practices. CONTRACTOR must comply with the standards in the most recent versions of appropriate Uniform Administrative Requirements and Worksystems policies and procedures.

#### B. Record Storage and Access

Records shall be retained and stored in a manner that will preserve their integrity and admissibility as evidence in any audit/litigation or other proceeding. The burden of production and authentication of the records shall be on the custodian of the records. The CONTRACTOR will maintain a plan for record recovery should critical records be lost.

After reasonable notice, at any time during normal business hours and as often as Worksystems may deem necessary, the CONTRACTOR shall make available for examination all its records relating to all matters covered by this Agreement to the named entities and representatives identified in Section 27.b. Federal Assurances of this Agreement.

This provision includes access to the CONTRACTOR's personnel for the purpose of interview and discussion of such documents, and/or the delivery of all the documentation to a location designated by Worksystems for purposes of review. The rights of access are not limited to the required retention period or agreement term, but shall last as long as records are retained.

If record storage is located other than at the CONTRACTOR'S principal place of business the CONTRACTOR shall inform Worksystems in writing of the exact location where all records, reports, and other documentation and physical evidence are to be retained; the original records shall remain the responsibility of the CONTRACTOR. Additionally, the CONTRACTOR will inform Worksystems in writing of any location changes prior to the date the records, reports and other documentation and physical evidence are moved. Any storage of the records, reports and other documentation beyond the boundaries of Worksystems'

service delivery area shall require prior written approval from Worksystems.

If the CONTRACTOR entity ceases operations, the CONTRACTOR shall provide an inventory of and all the records, reports and other documentation covered under this and any previous agreements between CONTRACTOR and Worksystems to Worksystems.

#### C. Record Retention Timeframes and Destruction Requirements

Federal record retention requirements applicable to this agreement are found at 2 CFR 200.333-337. The CONTRACTOR shall retain all financial and other required records and supporting documents as follows:

- 1) Retain all records pertinent to this Agreement, interagency agreements, contracts or any other award, including financial, statistical, or other pertinent records, and supported documentation, for a period of at least three years after the acceptance of the final expenditure report (closeout) for that funding period by the Awarding Agency. Worksystems will notify CONTRACTOR of the record destruction date when the final expenditure report has been issued and approved.
- 2) Retain all records on non-expendable property for a period of at least three (3) years after final disposition of property.
- 3) Retain indirect cost records such as computations or proposals, cost allocation plans, and supporting documentation for three years from the date the indirect cost rate package is submitted for negotiation. If not submitted for negotiation, the three-year period identified in 13.C.1). above shall apply.
- 4) Retain all records pertinent to applicants, registrants, eligible applicants/registrants, participants, terminees, employees and applicants for employment as required in 13.C.1) above. Participant files should be organized and stored by program year using the participant's year of exit.
- 5) Retain records regarding complaints and actions taken on the complaints for a period of not less than three (3) years from the date of resolution of the complaint.
- 6) Retain all records beyond the required period if any litigation or audit has begun or a claim is instituted involving the grant or agreement covered by the records. The records shall be retained until the litigation, audit or claim has been resolved or the specified destruction date, whichever is longer.

After the record retention period has passed, any records destroyed must be commercially shredded.

#### D. Limitation of Public Access to Records

If disclosure of trainee records is requested by the public, current confidentiality or non-disclosure standards in ORS 192 and OAR 589-020-0330, pertaining to records of participants, shall apply. Personal information may be made available to other service providers on a selective basis consistent with the participant's signed "Release of Information" form. Trade secrets, or commercial or financial information, that is obtained from a person and privileged or confidential shall not be available to the public.

#### E. Fees for Requests for Records

CONTRACTOR may charge fees sufficient to recover costs applicable to the processing of requests for records.



#### 14. Contracts and Assignments

The CONTRACTOR shall not assign or transfer any interest in this Agreement in whole or in part, or any right or obligation hereunder, without the prior written approval of Worksystems.

If approved, any contract entered into by the CONTRACTOR is not an obligation of Worksystems. The CONTRACTOR shall not represent that it has the power or authority to obligate Worksystems. No approval by Worksystems of any assignment or transfer shall be deemed to create any obligation of Worksystems in addition to those set forth in this Agreement. In no case shall such consent relieve the CONTRACTOR from the obligation under, or change the terms and conditions of, this Agreement, unless otherwise provided for. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns, if any.

Worksystems has the right to assign all Contract rights and responsibilities at any time by giving written notice of assignment to the CONTRACTOR.

Any work or services subcontracted hereunder shall be specified by a written contract, which shall be properly executed. Any entity that receives a subcontract must provide CONTRACTOR with their DUNS number **and be registered in the System for Award Management ([www.sam.gov](http://www.sam.gov))** prior to contract execution; the DUNS number must be maintained in the contract file and be available for review upon request. The CONTRACTOR shall provide a copy of the contract and any modifications to Worksystems, upon request.

The failure by Worksystems to enforce any provision of this Agreement shall not constitute a waiver of that or any other provision.

The CONTRACTOR remains responsible for assuring compliance by such delegates with requirements of the funding sources provided by or through Worksystems, Federal, State and local laws, regulations, policies, procedures and this Contract.

The CONTRACTOR shall conduct a program and fiscal monitoring of its subcontractors in accordance with CONTRACTOR monitoring policies and procedures. CONTRACTOR shall provide Worksystems with a copy of its monitoring policies, procedures, and schedule for approval. All program and fiscal monitoring reports for subcontractors of the CONTRACTOR will be provided to Worksystems for review and approval.

#### 15. Independent Contractor; Responsibility for Taxes and Withholding; and Retirement

CONTRACTOR is not an "officer", "employee", or "agent" of Worksystems, as those terms are used in ORS 30.265.

The CONTRACTOR shall perform all required work as an independent CONTRACTOR in accordance with but not limited to: Personal Income Tax Laws (ORS Chapter 316); Workers' Compensation Laws (ORS Chapter 656); Wages, Hours and Records Laws (ORS Chapter 652); Conditions of Employment Laws (ORS Chapter 653); Safety and Health Regulations (ORS Chapter 654); and Unemployment Insurance (ORS Chapter 657); conditions concerning payment, contributions, liens, withholding (ORS 279B.220; ) condition concerning payment for medical care and providing workers' compensation (ORS 279B.230); condition concerning hours of labor (ORS 279B.235); State contracting agencies to use recovered resources and recycled materials; notice to prospective contractors (ORS 279B. 270); conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials and complaints (ORS 279C.515); all regulations and administrative rules established pursuant to the foregoing laws; and all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

CONTRACTOR shall be responsible for all federal or state taxes applicable to compensation or payment paid to CONTRACTOR under this Agreement and unless CONTRACTOR fails to provide their correct Taxpayer Identification Number (TIN), Worksystems will not withhold from such compensation or payments any amount(s) to cover the CONTRACTOR's federal or state tax obligations. CONTRACTOR is not eligible for any Social Security unemployment insurance or workers' compensation benefits from compensation or payments paid to CONTRACTOR under this Agreement, except as a self-employed individual.

#### 16. Employee and Participant Status and Rights

##### A. Non-Employee Status of Trainees

Trainees in programs under this Agreement shall not be deemed Federal, State, City or Worksystems employees, and shall not be subject to the provisions of law pertaining to employment by any such government.

##### B. Employment Terms, Benefits and Working Conditions

All participants employed in subsidized jobs shall be provided benefits and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work, except that no funds available under this Agreement may be used for contributions on behalf of any trainee to retirement systems or plans.

##### C. Worksite Standards and Safety

Conditions of employment and training shall be appropriate and reasonable in light of such factors as the type of work, geographical region, and proficiency of the trainee.

Trainees enrolled under this Agreement shall be adequately supervised during training hours, be informed about their rights and responsibilities in reporting unsafe training or working conditions and training- or work-related illnesses and injuries, and be provided with safe training conditions which, at a minimum, shall conform to the health and safety regulations established by the State of Oregon. Health and safety standards established under State and Federal law, otherwise applicable to working conditions of employees, shall be equally applicable to working conditions of participants.

##### D. Charging of Fees to Participants

No person or organization, including private placement agencies, may charge a fee to any individual for referral to or placement in training or employment programs.

##### E. Grievance Procedures

The CONTRACTOR agrees to adopt procedures for hearing and resolving grievances and complaints arising out of this Agreement, in conformance with Worksystems' established policies and procedures. Procedures must comply with rules implementing the Workforce Innovation and Opportunity Act (WIOA).

The CONTRACTOR shall abide by Final Determinations issued under Worksystems, State or Federal grievance processes. Participants receiving services must read and sign a copy of the CONTRACTOR's Grievance Procedure which shall be kept in the participant's file.

#### 17. Performance Failure

In the event CONTRACTOR fails to perform under this Agreement, Worksystems may take action in accordance with Worksystems

Contract Monitoring policies, or if CONTRACTOR fails to take directed corrective action terminate or suspend the Contract (Section 26.b.5 Termination for Cause).

Worksystems may also pursue any remedies available under this Agreement, at law or in equity. Such remedies include, but are not limited to: termination of this Agreement effective upon written notice to CONTRACTOR, return of all or a portion of the Contract funds associated with the failure to perform and declaration of the CONTRACTOR's ineligibility for the receipt of future awards from Worksystems. If, as a result of an Event of Default (Section 28.b.6. Termination for Cause), Worksystems demands return of all or a portion of the Contract funds, CONTRACTOR shall pay the amount to Worksystems upon Worksystems' demand.

**18. Indemnification and Hold Harmless**

To the extent permitted by law, the CONTRACTOR shall indemnify, defend and hold harmless Worksystems, its Board of Directors, the Workforce Investment Board and their respective officers, agents and employees, from and against all liability that arises out of, in whole or in part, the acts or omissions of the CONTRACTOR or the CONTRACTORS employees or subcontractors.

If CONTRACTOR liability arises under above paragraph of this contract, due in whole or in part to Worksystems' acts or omissions, the indemnification obligation shall be prorated based upon the respective levels of fault attributable to the CONTRACTOR and Worksystems.

Notice shall be promptly submitted to Worksystems of any action brought against the CONTRACTOR resulting from or related to this contract.

**19. Equal Employment Opportunity and Nondiscrimination**

The CONTRACTOR shall not exclude from participation, discriminate against, or deny employment services or benefits to any person, including trainees, in the administration of or in connection with any program administered by the CONTRACTOR on the grounds of race, color, sex, religion, mental or physical disability, age, political affiliation, belief, national origin, marital status, application for Worker's Compensation benefits, youth offender (ORS Chapter 419A.004), sexual orientation or perceived sexual orientation, gender identity, or association with any person with, or perceived to have one or more of the above named characteristics, and for beneficiaries only, citizenship, or participation in the program funded under this Agreement. The CONTRACTOR shall take action to ensure that qualified applicants from groups which have historically been denied equal opportunity for employment because of the above factors shall be provided access to and encouraged to participate in employment and training activities.

CONTRACTOR will comply with all Federal, state and local laws, regulations, executive orders and ordinances regarding nondiscrimination and equal opportunity provisions applicable to work under this Contract. The CONTRACTOR expressly agrees to comply with the Equal Employment Opportunity provisions in Executive Order (E.O.) 11246, as amended by E.O. 11375 and supplemented by the requirements of 41 CFR Part 60.

Further, the CONTRACTOR shall include brief wording in each orientation of potential applicants to describe the Equal Opportunity and Affirmative Action position of this Contract and the method of filing a complaint in regard to such.

CONTRACTOR will ensure that the language "equal opportunity employer/program" and "auxiliary aids and services are available upon request to individuals with disabilities" appear in publications, broadcasts and other communications as outlined in the applicable Uniform Administrative Requirements. Where such materials indicate the CONTRACTOR may be reached by telephone, the materials must

state the telephone number of the TDD/TTY or relay service used by the CONTRACTOR, as required.

**20. Responsibility for Legal Compliance**

It is the responsibility of the CONTRACTOR to comply with the following:

**A. Limitations on Union or Anti-Union, Sectarian, Religious, Political or Lobbying Activities**

No funds under this agreement shall be used in any way to assist, promote or deter union activities. No individual shall be required to join a union as a condition for enrollment in a program in which only institutional training is provided unless such training involves individuals employed under a collective bargaining agreement. No trainee may be placed into, or remain working in, any position which is affected by labor disputes involving a work stoppage.

These funds may not be spent on the employment or training of participants in sectarian activities which include religious activities, political activities, and/or lobbying.

The CONTRACTOR agrees that the participants shall not be employed on the construction, operation or maintenance of any facility or portion of any facility which is used or may be used for sectarian instruction or as a place of religious worship.

**B. Applicable Laws, Regulations, and Policies**

All other applicable Federal, State and local laws, regulations, executive orders, ordinances and policies and appropriate U.S. Office of Management and Budget Circulars required by the Awarding Agency and the Pass-Through Entity (if applicable), and/or other applicable grants as related to activities under this Contract. This includes all applicable policies of Worksystems.

**C. Fraud Notification Requirements**

CONTRACTOR must comply with Worksystems' requirement that all suspected incidents of fraud, abuse, or other criminal activity must be immediately reported on the same business day as the complaint was made or the incident discovered. CONTRACTOR will conform to Worksystems' established policies and procedures for reporting and resolution.

**21. Maintenance of Effort**

No currently employed worker shall be displaced by any trainee, including partial displacement such as a reduction in the hours of non-overtime work, wages, or employment benefits. No program shall impair existing contracts for services or collective bargaining agreements. No program which would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization and employer concerned. No trainee shall be employed, or job opening filled when (a) any other individual is on layoff from the same or any substantially equivalent job, or (b) when the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created by hiring a trainee whose wages are subsidized under this Contract.

**22. Nepotism**

CONTRACTOR shall comply with 20 CFR 683.200(g) and federal and State nepotism rules implementing WIOA. No individual may be placed in an employment activity if a member of that person's immediate family is directly supervised by or directly supervises that individual.

No member of the immediate family of any officer, agent, director, partner or employee of the CONTRACTOR shall receive preferential treatment

for enrollment in services or training provided by, or employment with the CONTRACTOR.

The term "immediate family" means wife, husband, life/domestic partner, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, grandparent, stepparent, and stepchild. This includes aunts, uncles, nieces and nephews by blood or formal adoption only, but not such relationships by marriage.

**23. Code of Conduct**

CONTRACTOR shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer or agent shall participate in the selection, award, or administration of a contract or contract supported by these funds if a real or apparent conflict of interest as defined by ORS Chapter 244 would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family (see Section 22 Nepotism) or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award.

The officers, employees, and agents of the CONTRACTOR shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to sub-agreements. However, CONTRACTOR may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the CONTRACTOR. No officer, employee or agent, any member of his or her immediate family, or an organization which employs or is about to employ any of the parties indicated herein, shall financially benefit from the activities of any program participant or applicant.

**24. Patents and Copyrights**

The CONTRACTOR shall comply with the standards in 2 CFR Part 200 for the development, licensing, distribution and use of product(s) and material developed with this Contract.

**A. Patents**

The CONTRACTOR and Worksystems agree that this Contract shall be governed by Public Law 98-620, by the government wide regulations issued by the Department of Commerce at 37 CFR Part 401 for patents and inventions and implements Awarding Agency regulations. In accordance with these provisions, CONTRACTOR and Worksystems agree to promptly report all inventions made in the course of or under this Contract.

In the event that a patent application on such an invention is filed, CONTRACTOR hereby grants Worksystems and the Awarding Agency and Pass-Through Entity a non-exclusive, non-transferable, royalty-free license for research and educational purposes only.

**B. Copyrights**

The CONTRACTOR agrees that it will not knowingly include any material copyrighted by others in any written or copyrighted material furnished or delivered under this agreement without the consent of the copyright owner, unless it obtained specific written approval from Worksystems for the inclusion of such copyrighted materials.

**25. Public Information**

Whenever written or verbal information related to the services provided through this Contract is distributed to the media or directly to the general public, another agency or governmental audience, whether such information is solicited or unsolicited, the CONTRACTOR shall acknowledge and name Worksystems and the Awarding Agency as

providing funding for the services provided through this Contract. Additional applicable public disclosures requirements may be described in Special Conditions (Exhibit B).

**26. Governing Law, Venue, Consent to Jurisdiction**

This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected. The rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provisions held to be invalid.

Any claim, action, suit or proceeding (collectively, "Claim") between Worksystems and CONTRACTOR that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR, by execution of this Contract, hereby consents to the in personam jurisdiction of said courts.

**27. Assurance**

By signing this Agreement, the authorized representative certifies that the CONTRACTOR:

**A. Financial Capability**

Has the legal authority to apply for Federal, State or Local assistance, enter into this Contract Agreement, and the institutional managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this Agreement.

**B. Access to Records**

Will give Worksystems, the Awarding Agency, and Pass-Through Entity (if applicable), the Governor (if applicable) and their duly authorized representatives; appropriate governmental authorities involved in the administration of these funds to extent necessary for its proper administration, authority to audit, examine, and make excerpts or transcripts from its books of accounts, correspondence, papers, records, files, forms, or other documents of the CONTRACTOR including all contracts, invoices, materials, payrolls, personnel records, conditions of employment and other data relating to all matters covered by this Agreement which are necessary to evaluate whether the funds have been spent lawfully, and to determine compliance with all applicable rules and regulations, and the provisions of this Agreement, including the proper allocation of costs to this Agreement. Authorized representatives could include but are not limited to the Director - Office of Civil Rights, the Comptroller General of the United States and the Inspector General.

**C. Generally Accepted Accounting System**

Will establish a proper accounting system in accordance with Generally Accepted Accounting Principles (GAAP) and Worksystems policies and procedures.

**D. Conflict of Interest**

Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain. Every reasonable course of action shall be taken by the CONTRACTOR in order to maintain the integrity of this



expenditure of Worksystems' funds and to avoid any favoritism or questionable or improper conduct.

**E. Complete the Work**

Will initiate and complete the work within the applicable time frame after receipt of approval from Worksystems.

**F. Discrimination**

Will comply with all Federal, state and local laws, regulations, executive orders and ordinances regarding nondiscrimination and equal opportunity provisions applicable to this Agreement. These include but are not limited to:

- 1) Section 503 and 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination against qualified individuals with disabilities;
- 2) Title VI and VII of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin, as amended;
- 3) Age Discrimination in Employment Act of 1967 and Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on basis of age;
- 4) Americans with Disabilities Act of 1990 (ADA) Public Law 101-336 and ORS 659A.142, as amended;
- 5) Section 188 of the Workforce Innovation and Opportunity Act (WIOA);
- 6) Nontraditional Employment for Women Act of 1991;
- 7) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on basis of sex in educational programs;
- 8) Health Insurance Portability and Accountability Act of 1996;
- 9) Vietnam Era Veterans' Readjustment Assistance Act of 1974 as amended;
- 10) Drug Abuse Office and Treatment Act of 1972 (P.L. 92.255), as amended relating to nondiscrimination on the basis of drug abuse;
- 11) Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- 12) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd.3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- 13) Title VIII of the Civil Rights Act of 1968 (Fair Housing Act 42 U.S.C. 3601 et seq.) as amended, relating to nondiscrimination in the sale, rental or financing of housing;
- 14) 29 CFR Parts 33 and 37 (If Contract includes DOL funds);
- 15) Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made;
- 16) If operating within the City of Portland, (IV) 23.01.070 and 23.01.050 of the Code of the City of Portland; and
- 17) The requirements of any other nondiscrimination statute(s) which may apply to the application.

**G. Political Activities**

Will comply with the provisions of the Hatch Act (U.S.C. 1501-1508 and 7324-7328), which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds. In addition, the CONTRACTOR agrees to comply with, where applicable, Public Law 101-121, which prohibits influencing Federal financial transactions.

Shall not use funds provided under this Contract for publicity or propaganda purposes, for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself. Nor shall grant funds be used to pay the salary or expenses of any CONTRACTOR staff or agent, related to any activity designed to influence legislation or appropriations pending before the Congress.

**H. Audits**

Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, Audits of States, Local Governments and Non-Profit Organizations."

**I. Debarment and Suspension**

As required by Executive Orders 12549 and 12689 and 2 CFR 200.212 regarding Debarment and Suspension, the CONTRACTOR certifies to the best of its knowledge and belief, that neither it nor its principals:

- 1) Are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency;
- 2) Have within a three-year period preceding this proposal been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 3) Are presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(B) of this certification; and,
- 4) Have within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the CONTRACTOR is unable to certify to any of the statements in this certification, such CONTRACTOR shall provide an explanation to Worksystems.

**28. Contract Termination**

**A. Termination for Convenience**

This Agreement may be immediately terminated by the mutual consent of the parties. In the event of immediate termination, Worksystems shall, in accordance with applicable laws, reimburse the CONTRACTOR for reasonable costs incurred under this Agreement up to the date of termination.

Either party to this Agreement may terminate the agreement without cause by delivering a thirty- (30) day written notice of intent to terminate to the other party.

**B. Termination for Cause**

Worksystems may terminate or modify this Agreement, in whole or in part, in writing, immediately upon notice to CONTRACTOR, or at such later date as Worksystems may establish in such notice, upon the occurrence of any of the following events:

- 1) CONTRACTOR'S misuse of funds provided under this agreement or any other agreement CONTRACTOR has with Worksystems. Misuse of funds includes any unauthorized or inappropriate use of contract funds that violate Federal, state or local laws or regulations.
- 2) Worksystems fails to receive funding at levels sufficient to allow the purchase of the indicated CONTRACTOR services;
- 3) Federal, state or local laws, regulations or guidelines are modified or interpreted in such a way that either the services under this Agreement are prohibited or Worksystems is prohibited from paying for such services from the planned funding source;
- 4) CONTRACTOR no longer holds any license or certificate that is required to perform the work;
- 5) Significant changes in Worksystems priorities, as indicated by direct action of the Board of Directors of Worksystems.
- 6) CONTRACTOR, through any cause, has failed to perform in a timely and proper manner its obligations, in whole or in part, under this Agreement, has failed to make sufficient progress towards its objectives, or has violated any of the covenants, agreements, or stipulations of this Agreement. In this event, Worksystems shall notify the CONTRACTOR of the intended action in writing and specify the effective date thereof.

**C. Termination Procedures**

In the event of early Contract termination for whatever reason, and after receipt of the Notice of Termination, the CONTRACTOR shall stop work as specified in the notice and cancel outstanding commitments covering the procurement or rental of materials, supplies, equipment, and miscellaneous items. The CONTRACTOR will not enter into any further subcontracts and will not place any further order.

In addition, the CONTRACTOR shall exercise all reasonable diligence to accomplish the cancellation or diversion of outstanding commitments covering personal services that extend beyond the date of such termination, to the extent that they relate to the performance of any work terminated by the Notice. With respect to such canceled commitments, the CONTRACTOR agrees to settle all outstanding liabilities and all claims arising out of such cancellation of commitments, or ratify all such settlements.

Further, upon termination, CONTRACTOR shall deliver to Worksystems all documents, information, work-in-progress and other property as outlined in Special Conditions (Exhibit B).

**D. Payment after Termination**

In the event of early Contract termination initiated by either party for whatever reason, the CONTRACTOR shall only be entitled to receive reimbursement for costs incurred for services provided

prior to the Contract termination date. It is understood that performance in compliance with the Statement of Work (Exhibit C) is a prerequisite to receiving payment.

Notwithstanding the above, the CONTRACTOR shall not be relieved of liability to Worksystems for damages sustained by Worksystems by virtue of any breach of this Agreement by the CONTRACTOR, and Worksystems may withhold any payments to the CONTRACTOR for the purpose of offset until such time as the exact amount of damages due Worksystems from the CONTRACTOR is determined.

**E. Close Out Responsibilities and Procedures**

Upon notice of termination or expiration of this Agreement, regardless of the reason, CONTRACTOR will work with Worksystems to establish an acceptable close-out plan which will include both program and administrative components and associated due dates that ensure a smooth transition and compliance with all State and Federal requirements.

The plan will include, but is not limited to, activities that ensure participants are transferred to another similar program with the least amount of disruption possible; participant files and all financial records are updated and assurances in place of record retention provisions; the timeline for submission of final invoices, quarterly reports, leveraged funds, performance reports and updating I-Trac data; and when applicable, accounting of program income, stand-in costs and match funds are in place.

**29. Agreement Modifications**

This Agreement constitutes the entire agreement between the parties hereto. Any amendments to this Agreement or its attachments shall be effective only when they are reduced to writing and duly signed by both parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

**30. Insurance Requirements**

CONTRACTOR shall provide insurance coverage at its own expense for the required level of insurance as specified in this Exhibit. All insurance carried by the CONTRACTOR must be primary to and non-contributory with any insurance, including any self-insurance or retentions carried by the CONTRACTOR.

CONTRACTOR shall be financially responsible for all deductibles or self-insured retention contained within the insurance. CONTRACTOR agrees to maintain continuous, uninterrupted coverage for the duration of this Agreement. There shall be no cancellation, material change, or reduction of limits without thirty (30) days advance written notice from the CONTRACTOR to Worksystems.

If the insurance is canceled or terminated prior to completion of the Agreement, CONTRACTOR shall purchase new coverage and provide a certificate of insurance evidencing coverage and limits equal to or greater than the required level of insurance as defined in this Exhibit. In the event the CONTRACTOR fails to keep in effect at all times the specified insurance coverage, Worksystems may terminate this Agreement, subject to the provisions of this Agreement.

**A. General Liability Insurance**

CONTRACTOR must carry a Commercial General Liability insurance policy on an occurrence basis with a combined single limit of at least \$1,000,000 per occurrence and at least \$2,000,000 in the aggregate per project, for Bodily Injury, Property Damage, and Personal Injury, which protects the Awarding Agency, Pass-Through Entity (if applicable), Worksystems and each of their respective officers, agents, and



employees from claims for damages arising in whole or in part out of CONTRACTOR's performance under this Agreement. The general liability insurance shall provide contractual liability coverage for the indemnity required under this contract.

**B. Motor Vehicle Liability Insurance**

CONTRACTOR must carry Automobile Liability insurance with a combined single limit of not less than \$1,000,000 combined single limit per accident for Bodily Injury and Property Damage for CONTRACTOR'S vehicles, whether owned, hired, or non-owned, which includes coverage for Worksystems and their respective officers, agents, and employees.

**C. Professional Liability Errors and Omissions Insurance**

Contractor shall at all times carry a Professional Liability/Errors and Omissions type insurance policy with limits of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate.

**D. Workers' Compensation Insurance**

The CONTRACTOR must carry Workers' Compensation Insurance in compliance with ORS 656 covering all its employees as required by applicable workers' compensation laws including employers' liability with limits not less than \$500,000/ \$500,000/ \$500,000. If the CONTRACTOR pays wages directly to trainees under this Agreement, the CONTRACTOR must also carry Workers' Compensation Insurance in compliance with ORS 656 covering any and all such trainees. No Workers' Compensation Insurance has been or will be obtained by Worksystems for the CONTRACTOR or for the CONTRACTOR'S employees and subcontractors.

**E. Bonding**

The CONTRACTOR shall carry an Employee Fidelity Bond on every officer, director, agent, or employee authorized to receive or deposit funds under this contract or issue financial documents, checks, or other instruments of payment of program costs. Bond shall be in the amount of at least \$100,000. The bond shall be effective prior to any Contract payment and for at least twelve (12) months after this Agreement terminates.

**F. Property and Equipment**

All property and equipment purchased by CONTRACTOR with funds received under this Agreement, or purchased on behalf of CONTRACTOR for the program site(s) covered under this Agreement, shall be insured by CONTRACTOR at replacement value against fire, theft, and destruction equal to the full replacement cost.

**G. Certificates of Insurance**

As evidence of the insurance coverage required by this Agreement, the CONTRACTOR shall furnish acceptable insurance certificates to Worksystems at the time, or prior to the time, CONTRACTOR executes this Agreement. CONTRACTOR shall name Worksystems and each of their respective officers, agents, and employees as additional insured with respect to the CONTRACTOR's services to be provided under this Agreement. Insuring companies or entities are subject to Worksystems acceptance. If requested, complete copies of the insurance policy shall be provided to Worksystems.

**H. Subcontractor Insurance**

CONTRACTOR shall require and verify that all of its subcontractors of any tier provide insurance coverage and limits identical to the insurance required of the CONTRACTOR under this agreement, unless this requirement is expressly modified or waived by Worksystems in writing.

**I. Sexual/Physical Abuse/Molestation Insurance**

If CONTRACTOR serves participants under age 18, CONTRACTOR must carry a Sexual or Physical Abuse or Molestation Liability insurance policy on an occurrence basis with a combined single limit of at least \$1,000,000 per occurrence and at least \$1,000,000 in the aggregate, which protects the Awarding Agency, Pass-Through Entity (if applicable), Worksystems and each of their respective officers, agents, and employees from claims for damages arising in whole or in part out of CONTRACTOR's performance under this Agreement.