

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (this "Contract") is between **Worksystems, Inc.**, hereafter called "Worksystems", and **Name of Contractor**, hereafter called "CONTRACTOR". In the event of any conflict between the stated provisions of this Contract and its attached documents, the provisions of this Contract shall control.

This Agreement is made with reference to the following facts which are incorporated herein by reference:

- A. CONTRACTOR is qualified and engaged in the business of providing the services described in Section 1 ("Services") and doing business primarily from an office located at the address specified in Section 24 herein unless otherwise approved by Worksystems;
and
- B. Worksystems wishes to engage CONTRACTOR to provide the Services as an Independent Contractor and CONTRACTOR wishes to accept such Contract work pursuant to the terms and conditions in this agreement.

THE PARTIES AGREE:

1. **Description of Services and Deliverables** — Worksystems hereby engages CONTRACTOR, and CONTRACTOR agrees to accept said engagement, to provide the Services to Worksystems, as requested by Worksystems and agreed to by CONTRACTOR, and more specifically described in Exhibit A: Statement of Work.

CONTRACTOR shall control the manner and means, including the time and location, of providing any and all Services, and shall at all times act in a manner consistent with its status as an Independent Contractor. Worksystems will not provide CONTRACTOR or its employees with any training or instructions with respect to the Services. Worksystems will not exercise day-to-day supervision or control over CONTRACTOR's or CONTRACTOR's employees' performance of the Services.

2. **Acceptance** — Worksystems' payment to CONTRACTOR for services and deliverables provided under this Contract does not constitute acceptance of those services and deliverables. Services and deliverables are accepted only when Worksystems issues written notification of receipt of a satisfactory work product to CONTRACTOR. Written notification may be in the form of electronic communication and may come from the Worksystems staff assigned oversight for the contracted work.
3. **Term** — Services will begin **DATE** and terminate upon completion and acceptance of the deliverables outlined within this Contract, but no later than **DATE** unless earlier terminated as provided for in Section 11 herein.
4. **Compensation** — Payments to CONTRACTOR under this Contract will not exceed **\$XXX** (the "Contract Total"). Refer to Exhibit A: Statement of Work for details and limitations. Payments shall be made as invoiced upon completion and acceptance by Worksystems of the deliverables.

CONTRACTOR shall submit an invoice to Worksystems itemizing deliverable addressed with dates, amounts, and rates applied if applicable. Invoices must be submitted at least quarterly. Due to the requirements of many of Worksystems' funding sources, payment shall be processed in the normal course and manner for Worksystems' accounts payable, not to exceed thirty (30) days from the date of Worksystems' receipt of payment from the funder or pass-through entity providing the funds for CONTRACTOR'S services under this Contract.

Final payment shall be invoiced within 30 days of completion and acceptance of all deliverables. The maximum amount payable by Worksystems to the CONTRACTOR shall not exceed the Contract Total.

No charges submitted after **45 days after end date** will be paid. Submit invoices to fiscal@worksystems.org.

5. **System for Award Management Requirements** — CONTRACTOR represents, warrants, and covenants that it:
 - Was registered in the System for Award Management (SAM) prior to entering into this Contract.
 - Will maintain an active SAM registration with current information, including information on a recipient's immediate and highest-level owner and subsidiaries, as well as on all predecessors that have been awarded a Federally funded contract or grant within the last three years, if applicable, at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency or pass-through entity.
 - Will provide its Unique Entity Identifier in each contract engagement.
 - Is not, nor has been, debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Additionally, CONTRACTOR has no knowledge of any proposed actions against it for its debarment, suspension, proposed debarment, declaration of ineligibility, or voluntary exclusion from participation in this transaction by any federal department or agency.
 - Does not have an active exclusion record on its Unique Entity Identifier Number in SAM at www.sam.gov.

CONTRACTOR shall notify Worksystems promptly upon its knowledge that any of the representations or warranties above are inaccurate.

6. **Independent Contractor Status** — Nothing contained in this Agreement shall be construed so as to create a partnership or joint venture, and neither party shall be liable for the debts or obligations of the other. CONTRACTOR shall at all times be considered an Independent Contractor, and nothing herein shall be construed to create the relationship of employer and employee between Worksystems and CONTRACTOR. CONTRACTOR and Worksystems intend on operating their respective businesses independently of each other at all times. CONTRACTOR shall retain sole and absolute discretion in the manner and means of carrying out the Services.

All persons employed by CONTRACTOR and that may participate in CONTRACTOR's performance of the Services as provided in this Agreement shall be its employees, agents, or principals and not principals, agents, or employees of Worksystems. Accordingly, CONTRACTOR and its principal ("Contractor's Principal") covenant agree not to hold itself out as an employee of Worksystems, and CONTRACTOR and Contractor's Principal acknowledge that they have no right or entitlement in or to any right, privilege or benefit which would accrue to an employee of Worksystems for any purposes, including, but not limited to, the application of the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, applicable employment, leave and benefits laws, and other benefit payments or third-party liability claims.

7. **Subcontracts and Assignment** — CONTRACTOR will not subcontract with others for any of the Services provided under this Contract or assign any of CONTRACTOR'S rights acquired under this Contract without the prior written consent of Worksystems. Worksystems is not liable to any third person for payment of any compensation payable to CONTRACTOR under this Contract.
8. **Access to and Retention of Records** — Worksystems' authorized representatives shall have access to books, documents, papers, and records of CONTRACTOR that are directly pertinent to this Contract for the purpose of process documentation or making audit, examination, excerpts, and transcripts.

Documents, papers, and records directly pertinent to this Contract must be retained for the longer of six (6) years or a specific date communicated by Worksystems at any time during the six (6) year period. Retention period begins with the termination of this Contract.

9. **Ownership of Work Product** — All work products of the CONTRACTOR resulting from this Contract are the exclusive property of Worksystems, including native files created by CONTRACTOR.
10. **Intellectual Property Rights** — To ensure that the federal funds invested through this Contract have as broad an impact as possible and to encourage innovation in the development of new learning materials, CONTRACTOR must license to the public all work (except for computer software source code, discussed below) created with the federal funds provided under this Contract under a Creative Commons Attribution 4.0 (CC BY) license. Work that must be licensed under the CC BY includes both new content created with federal funds and modifications made to pre-existing, CONTRACTOR-owned content using federal funds.

This license allows subsequent users to copy, distribute, transmit and adapt the copyrighted work and requires such users to attribute the work in the manner specified by the CONTRACTOR. CONTRACTOR will affix notice of the license to the work. For general information on CC BY, please visit <http://creativecommons.org/licenses/by/4.0>. Instructions for marking your work with CC BY can be found at http://wiki.creativecommons.org/Marking_your_work_with_a_CC_license. Questions about CC BY as it applies to specific applications should be submitted in writing to Worksystems.

Only work that is developed by the CONTRACTOR with federal funds is required to be licensed under the CC BY license. Pre-existing copyrighted materials licensed to, or purchased by the CONTRACTOR from third parties, including modifications of such materials, remain subject to the intellectual property rights the CONTRACTOR receives under the terms of the particular license or purchase. In addition, works created by the CONTRACTOR without federal funds do not fall under the CC BY license requirement.

The purpose of the CC BY licensing requirement is to ensure that materials developed with federal funds result in work that can be freely reused and improved by others. When purchasing or licensing consumable or reusable materials, CONTRACTOR will respect all applicable federal laws and regulations, including those pertaining to the copyright and accessibility provisions of the federal Rehabilitation Act.

Further, the Department of Labor requires, and CONTRACTOR will ensure, that all computer software source code developed or created with federal funds will be released under an intellectual property license that allows others to use and build upon them. Specifically, the CONTRACTOR will release all new source code developed or created with federal funds under an open license acceptable to either the Free Software Foundation and/or the Open Source Initiative.

Separate from the CC BY license to the public, the federal Government reserves a paid-up, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal purposes the copyright in all products developed with federal funds, including a purchase ownership (including, but not limited to, curricula, training models, technical assistance products, and any related materials). Such uses include, but are not limited to, the right to modify and distribute such products

worldwide by any means, electronically or otherwise. CONTRACTOR may not use federal funds to pay any royalty or license fee for use of a copyrighted work, or the cost of acquiring by purchase a copyright in a work, where the Department of Labor has a license or rights of free use in such work. If revenues are generated through selling products developed with federal funds, including intellectual property, these revenues are program income. Program income is added to the contract and must be expended for allowable activities.

CONTRACTOR will apply the following statement on all products developed in whole or in part with federal funds: "This workforce product was funded by a grant awarded by the U.S. Department of Labor's Employment and Training Administration. The product was created by the grantee and does not necessarily reflect the official position of the U.S. Department of Labor. The U.S. Department of Labor makes no guarantees, warranties, or assurances of any kind, express or implied, with respect to such information, including any information on linked sites and including, but not limited to, accuracy of the information or its completeness, timeliness, usefulness, adequacy, continued availability, or ownership."

CONTRACTOR represents and warrants that it has secured all rights, licenses, consents, and approvals necessary for Worksystems to use, upload, or otherwise make accessible perpetually and throughout the world, all Third-Party Materials. "Third-Party Materials" means content in any form or media, including but not limited to documents, data, expertise, ideas, specifications, and software code, in which any person other than CONTRACTOR or Worksystems holds any intellectual property or proprietary rights including but not limited to copyright, patent, or trademark.

CONTRACTOR shall secure for the benefit of Worksystems, at CONTRACTOR'S sole cost and expense, all rights, licenses, consents, and approvals necessary for Worksystems to use the Third-Party Materials in connection with this Contract, and to freely sublicense such rights as necessary to allow end users to access and use the Third-Party Materials as contemplated in this Contract. All royalties, license fees or other considerations payable in respect of such licenses are included in the compensation described in Section 4.

11. **Early Termination** — This Contract may be terminated by mutual consent of both parties, or by either party upon 30 days' written notice. In the case of CONTRACTOR breach of the terms of this agreement, Worksystems may terminate or modify this Contract, in whole or in part, in writing, immediately upon notice to CONTRACTOR, or at such later date as Worksystems may establish in such notice.
12. **Insurance and Licenses** — CONTRACTOR affirms that it has and will maintain during the term of this Agreement, at its own cost and expense, all insurance and/or bonds, registration, permits and licenses required of CONTRACTOR by law, including workers compensation insurance as and to the extent required by Oregon law. CONTRACTOR shall provide Worksystems with appropriate proof of such insurance reflecting the required coverage upon request.
13. **Taxes and Reporting** — CONTRACTOR is responsible for proper payment and reporting of all taxes including applicable Federal, State, and local taxes arising out of CONTRACTOR's activities, including by way of illustration but not limitation, Federal and State income tax, Social Security tax, unemployment insurance taxes, and any other taxes, registrations, or business license fees, as required. CONTRACTOR recognizes and understands that it will receive from Worksystems an IRS Form 1099 statement and related tax statements, and that it will be required and agrees to file any applicable tax returns and to pay any applicable taxes in accordance with all provisions of applicable federal and state law.
14. **Location, Resources and Equipment** — As an Independent Contractor providing the Services to Worksystems hereunder, CONTRACTOR will provide any resources it determines are needed to provide the Services. CONTRACTOR shall be responsible, at its own cost and expense, to furnish the necessary personnel, incidental services, equipment, and facilities to perform the Services at its own office location, including without limitation its own computer, internet access, facsimile machines, photocopy machines, computers, printers and other equipment and facilities necessary to perform its responsibilities hereunder. Nothing in this Agreement shall be deemed a requirement that CONTRACTOR incur a cost or expense except as it chooses in its sole discretion. Notwithstanding the above, CONTRACTOR shall be permitted limited access to use of Worksystems facilities and equipment when at the Worksystems location as requested and approved by Worksystems, and only to the extent necessary to perform the Services.
15. **Compliance** — CONTRACTOR shall comply with all applicable federal, state, and local laws, regulations, rules, policies, and procedures, including all applicable Worksystems policies, rules, and procedures. If CONTRACTOR is a Contracting agency as defined by ORS 279A.010(b) or will be providing services to a public body as defined by ORS 279A.010(y), then CONTRACTOR shall comply with all requirements of ORS 279A, 279B, and 279C applicable to personal services contracts in the performance of services under this Agreement.
16. **Security of Information**

Breach Notification — Any CONTRACTOR who becomes aware of any potential or actual breach of a document or electronic file containing personal information of any person deemed eligible for, enrolled in, or engaged in program services funded by Worksystems (a "participant" for the purpose of this Section) will immediately notify Worksystems. A breach occurs when any unauthorized individual or entity gains access to personal information or when unintended disclosure of personal information is

made, for example loss or theft of an electronic device containing personal information, loss or theft of a paper document containing personal information, unauthorized access to a network containing personal information, or a document containing personal information being sent to the wrong address.

Social Security Number Use — CONTRACTOR will not print a participant's full Social Security Number (SSN) on any document that will be sent through the mail (U.S. or electronic) without a written request from the person whose SSN will be printed on the document, except as required by law. CONTRACTOR will use only the I-Trac Customer ID, the Jobseeker ID, or the last 4 digits of an SSN on documents unless there is a compelling business reason to use the entire SSN. If a document contains a full SSN, THE CONTRACTOR will take steps to protect the document from unauthorized disclosure. CONTRACTOR will not provide copies of a document containing a full SSN to anyone other than the person whose SSN is listed on the document, except as allowed by State or federal law. The CONTRACTOR may provide a copy of a document to a third party with the SSN redacted if the document is otherwise allowed to be released. CONTRACTOR will not publicly post or display a document containing a full SSN.

Confidentiality — Confidential Information means (i) all information, however documented, that is a trade secret of Worksystems within the meaning of the Oregon Trade Secret Act; (ii) all information marked or designated by Worksystems as "confidential" or "proprietary"; (iii) all information, whether or not in written form and whether or not designated as confidential or proprietary, which is known to CONTRACTOR as being treated by Worksystems as confidential or proprietary; (iv) all information provided to Worksystems by third parties which Worksystems is obligated to keep confidential; and (v) all other information that has been created, discovered, developed or otherwise become known to Worksystems, and/or in which property rights have been assigned or otherwise conveyed to Worksystems, that has commercial value to Worksystems. Confidential Information shall include information in any form in which such information exists, whether oral, written, filmed, taped, computer disk, or other form of media. Confidential Information shall include, by way of illustration and not limitation, names of participants and customers.

Ownership — CONTRACTOR acknowledges that, in the course of performing services under this Contract, CONTRACTOR will have access to, and become conversant with, certain Confidential Information of Worksystems, the ownership and confidential status of which are highly important to Worksystems, and that it would be unfair and irreparably damaging to Worksystems for CONTRACTOR to disclose or use any such Confidential Information. CONTRACTOR acknowledges and agrees that all Confidential Information is and shall continue to be the exclusive and permanent trade secret and proprietary property of Worksystems, whether or not prepared in whole or in part by CONTRACTOR, and whether or not disclosed or entrusted to CONTRACTOR in connection with the performance of services under this Contract.

Covenants of Non-Disclosure and Non-Use — CONTRACTOR agrees that it will maintain the confidentiality of all Confidential Information, and will not, during the term of this Contract or thereafter, reveal, communicate, or disclose any Confidential Information, directly or indirectly, under any circumstance or by any means, to any person, entity or third party. CONTRACTOR agrees to exercise the highest degree of care in safeguarding Confidential Information against loss, theft, or other inadvertent disclosure, and agrees to take all steps necessary to ensure the maintenance of confidentiality. CONTRACTOR further agrees that they will not, during the term of this Contract or thereafter, directly or indirectly, copy, reproduce, summarize, quote, or make any commercial or other use whatsoever of any Confidential Information, except as may be necessary to perform services under this Contract.

Return of Confidential Information — CONTRACTOR agrees, upon termination of this Contract, or otherwise as requested by Worksystems, to promptly deliver to Worksystems all documents or other materials containing, reflecting or constituting Confidential Information that may be in its possession or under its control, together with CONTRACTOR's written certification of compliance. CONTRACTOR shall not retain any copies, extracts, or other reproductions, in whole or in part, of any Confidential Information, and shall destroy all documents, memoranda, notes and other writings whatsoever prepared by CONTRACTOR based on the Confidential Information.

Remedies: Equitable Relief — CONTRACTOR acknowledges that a breach of any of the provisions of this Section will cause Worksystems irreparable and continuing injury and damage, for which there will be no adequate remedy at law. By reason thereof, CONTRACTOR agrees that Worksystems shall be entitled, in the event of a breach or threatened breach of the provisions of this Section, to specific performance, including immediate issuance of a temporary restraining order and/or preliminary or permanent injunctive relief enforcing this Contract, without the necessity of proof of actual damages and without posting bond for such relief, in addition to any and all other remedies provided by applicable law or equity.

- 17. Non-Discrimination** — CONTRACTOR agrees to comply with all applicable requirements of federal and state employment law, civil rights, rehabilitation statutes, and all other applicable statutes relating to discrimination.
- 18. Indemnification** — CONTRACTOR shall indemnify, defend, and hold harmless Worksystems and its subsidiaries, affiliates, and their respective officers, directors, employees, agents, successors, and permitted assigns (each, a "Worksystems Indemnitee") from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, the cost of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers, arising out of or resulting from CONTRACTOR's failure to comply with any of its obligations under this Contract and the negligent acts and misrepresentations of CONTRACTOR or Contractor's Principal(s) in performing the Services. CONTRACTOR agrees, upon written request of Worksystems, to defend any suit or action brought against Worksystems on any such claims or demand. All obligations of this section shall survive termination of this Agreement and

continue for so long as any claim may arise from this Agreement or the Services performed by CONTRACTOR pursuant to this Agreement.

- 19. **Time is of the Essence** — Time is of the essence in the performance of this Contract.
- 20. **Other Contractors** — Worksystems may undertake or award other Contracts for additional or related work, and the CONTRACTOR shall fully cooperate with such other Contractors and with any Worksystems employees concerned with such additional or related work and shall coordinate its performance under this Contract with such additional or related work. CONTRACTOR shall not commit or permit any act that will interfere with the performance of work by another Contractor or by Worksystems or its employees.
- 21. **Errors** — CONTRACTOR shall perform such additional work as may be necessary to correct errors in the work required under this Contract without undue delays and without additional cost.
- 22. **Other Modifications** — Worksystems may unilaterally modify or terminate this Contract if its grants are suspended, reduced, or terminated before or during the term of this Contract, or in order to accommodate any change in the Workforce Innovation and Opportunity Act or in the interpretation of such Act, or in any applicable local, state, or federal laws, regulations, rules, policies, or grant terms.

Worksystems may unilaterally modify this Contract whenever such action may be required by significant changes in Worksystems priorities, as indicated by direct action of the Board of Directors of Worksystems. In this event, notification of intent shall be provided to CONTRACTOR no less than thirty (30) calendar days prior to the effective date of the modification.

- 23. **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, or email, and addressed to the contact information outlined in this contract.
- 24. **Contacts** — For purposes of this contract, all communication will be directed to:

Worksystems' Program Contact	Worksystems' Fiscal Contact	CONTRACTOR Program Contact
<p>Name Title Phone name@worksystems.org</p>	<p>Name Title phone email@worksystems.org</p>	<p>Name Title Phone Email</p>

- 25. **Signatures** — Worksystems and CONTRACTOR, by signature below, hereby agree to be bound by all the terms and conditions of this contract. No waiver, consent, modification, or change of terms of this contract shall bind either party unless in writing and signed by both parties.
- 26. **Waiver** — Waiver of any default under this Contract by Worksystems shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Contract.
- 27. **Governing Law** — The provisions of this Contract shall be construed in accordance with the laws of the State of Oregon without regard to conflict of law principles. Any legal action involving any question arising under this Contract must be brought in Multnomah County Circuit Court. If the claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the State of Oregon.
- 28. **Severability** — 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, and the rights and obligations of the parties shall be construed and enforced as if this Contract did not contain the particular term or provision held invalid.
- 29. **Force Majeure**. Except as hereinafter provided in this Section, no delay or failure in performance by Worksystems shall constitute a default under this Agreement if the delay or failure is caused, in whole or in part, by a Force Majeure Event. A "Force Majeure Event" means any event beyond the control of Worksystems and that Worksystems is unable to prevent by the exercise of reasonable diligence, including, without limitation, the combined action of workers, strikes, embargoes, fire, acts of terrorism, pandemic, medical epidemic, explosions and other catastrophes, governmental actions or orders, national emergency, war, civil disturbance, floods, unusually severe weather conditions or other acts of God or public enemy.
- 30. **Merger Clause** — This Contract and the attached exhibits constitute the entire agreement between the parties. All understandings and agreements between the parties and representations by either party concerning this Contract are contained in this Contract. No waiver, consent, modification or change in the terms of this Contract shall bind either party unless in writing signed by both parties. Any written waiver, consent, modification, or change shall be effective only in the specific instance and for the specific purpose given.



CONTRACTOR NAME

Street Address
City, State, ZIP
Phone

WORKSYSTEMS, INC.

1618 SW First Ave., Suite 450
Portland, OR 97201
503.478.7300

By: _____
Name
Title

By: _____
Andrew McGough
Executive Director

Date: _____

Date: _____

SAMPLE