

## Contract General Provisions

### **A. PAYMENT TERMS AND CONDITIONS**

- C.1. **Costs.** Invoices must be submitted monthly by the 15<sup>th</sup> of the month for the previous month by the contractor to the WA. Costs must be agreed to and necessary to carry out the contracted services. No costs will be reimbursed that occurred prior to this contract or after.
- C.2. **Maximum Liability.** In no event shall the maximum liability of the Workforce Alliance under this Contract exceed the amount preauthorized by the Workforce Alliance through fully executed vouchers. The cost items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. **Compensation Firm.** The compensation for this Contract is based on services provided and billing arrangements will be established between the Workforce Alliance and Contractor. The maximum liability of the Workforce Alliance is not subject to escalation for any reason unless amended in writing and signed by both parties.
- C.4. **Payment Methodology.** The Contractor shall submit invoices in terms acceptable to the Workforce Alliance, with all of the necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices shall be submitted, as described herein, and shall indicate at a minimum the amount charged for the period invoiced.
- C.5. **Payment of Invoice.** The payment of an invoice by the Workforce Alliance shall not prejudice the Workforce Alliance's right to object to or question any invoice or matter in relation thereto. Such payment by the Workforce Alliance shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the costs invoiced therein.
- C.6. **Unallowable Costs.** The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Workforce Alliance on the basis of audits or monitoring conducted in accordance with the terms of this Contract or applicable law not to constitute allowable costs.

### **D. STANDARD TERMS AND CONDITIONS**

- D.1. **Participant Enrollment.** No services may be provided by contractor prior to approval. All participants must be approved for services by the Workforce Alliance. The Workforce Alliance will provide the Contractor with a purchase order for services or a voucher for services before any services shall be provided.
- D.2. **Required Approvals.** The Workforce Alliance is not bound by this Contract until it is approved by the Workforce Alliance in accordance with applicable state and Federal laws, policies, rules, regulations, executive orders and circulars.
- D.3. **Modification and Amendment.** This Contract may be modified by the Workforce Alliance upon written notice to the Contractor to comply with any changes in state and Federal laws, policies, rules, regulations, executive orders and circulars by a written amendment executed by all parties hereto and approved by the Workforce Alliance in accordance with applicable state and Federal laws, policies, rules, regulations, executive orders and circulars.
- D.4. **Corrective Action.** Contracted discrepancies or non-compliance with Federal, state, or local regulation under this contract by the Contractor may result in a request for a written Corrective Action Plan before termination of the Contract. The written Corrective Action Plan, prepared by the Contractor must be submitted within thirty (30) days of the date of request and state specifically what the Contractor will do to rectify the problem. The response must include applicable copies of corrections, necessary documentation, and other related information as requested by the Workforce Alliance. The Contractor must ensure that the corrective action will prohibit the reoccurrence of the discrepancies or concerns as identified. The Corrective Action Plan must be accepted by the WA; however, if an acceptable Corrective Action Plan cannot be negotiated, the Workforce Alliance may terminate this contract. If the Corrective Action Plan is accepted by the Workforce Alliance, but is not implemented by the Contractor, the Workforce Alliance may terminate the Contract.

- D.5. Termination for Convenience. The Workforce Alliance or Contractor may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract. The Workforce Alliance and the Contractor shall give at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the Workforce Alliance be liable to the Contractor for compensation for any service which has not been rendered. The final decision as to the amount, for which the Workforce Alliance is liable, shall be determined by the Workforce Alliance. Should the Workforce Alliance exercise this provision, the Contractor shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, or applicable state and Federal laws, policies, rules, regulations, executive orders and circulars in regards to this contract, the Workforce Alliance shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the Workforce Alliance for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.7. Subcontracting. The Contractor will not enter into any subcontract(s) for the services to be performed under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the total contract amount shall be paid directly or indirectly to an employee or official of the Workforce Alliance as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.9. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a) No Federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, and entering into of any cooperative agreement, and the extension, continuation renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
  - b) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Contract, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
  - c) The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of Federally appropriated funds shall certify and disclose accordingly.
- D.10. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by any applicable state and Federal laws, policies, rules, regulations, executive orders and circulars.
- D.11. Public Accountability. This Contract involves the use of Federal, and/or state funds, to provide services to the citizens of Kansas by the Contractor. Therefore, the Contractor agrees to comply with any applicable state and Federal laws, policies, rules, regulations, executive orders and circulars regarding public accountability and grievance procedures.
- D.12. Public Notice. The Workforce Alliance reserves the right to coordinate the release of all information associated with this Contract. All news releases, notices, informational pamphlets, research reports, signs, and similar public notices associated with this award prepared and released by the Contractor shall include a statement such as, "This project is funded under an agreement with the Workforce Alliance". Any such notices in connection to this Contract shall be approved by the Workforce Alliance.
- D.13. Public Information. This contract once executed is public record and is open to any public inspection or review.

- D.14. **Licensure.** The Contractor and its employees and all sub-contractors shall be licensed pursuant to all applicable Federal, stated, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.
- D.15. **Records.** The Contractor shall maintain documentation under this contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years after the Contractor receives final payment and all other pending matters are closed. All records shall be subject to audit at any reasonable time and upon reasonable notice by the Workforce Alliance, the Comptroller of the Treasury, or their duly appointed representatives. All records shall be maintained in accordance with applicable state and Federal laws, policies, rules, regulations, executive orders and circulars.
- D.16. **Monitoring and Auditing.** The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the Workforce Alliance, the Kansas Department of Commerce, the Regional Economic Area Partnership, the Comptroller of the United States Treasury, and/or their duly appointed representatives.

The Workforce Alliance reserves the right to dispatch auditors of its choosing to any site where any phase of the program is being conducted, controlled, or advanced in any way, tangible or intangible, subject to applicable export law and/or regulation.

- D.17. **Reports.** The Workforce Alliance will require reports on each service to allow for the best possible services for our youth. Reports shall be submitted within 20 business days after the conclusion of any service.
- D.18. **Strict Performance.** Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.19. **Independent Contractor.** The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the Workforce Alliance, acknowledges that it shall provide the bond and insurance coverage permitted by Kansas Statutes and regulations, and to pay all applicable taxes incident to this Contract.

- D.20. **Workforce Alliance Liability.** The Workforce Alliance shall have no liability except as specifically provided in this Contract.
- D.21. **Force Majeure.** The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics, or any other similar cause.
- D.22. **State and Federal Compliance.** The Contractor shall comply with all applicable state and Federal laws policies, rules, regulations, executive orders and circulars in the performance of this Contract.
- D.23. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Kansas. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Kansas in actions that may arise under this Contract. The United States District Court for the State of Kansas sitting in Wichita, Sedgwick county, Kansas, shall be the venue for any Federal action or proceeding arising hereunder in which the State is a party. The Contractor acknowledges and agrees that any rights or claims against the State or the Workforce Alliance or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under Kansas Statutes Annotated.

- D.24. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.25. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of the Contract are declared severable.
- D.26. Headings. Section heading are for reference purposes only and shall not be construed as part of this Contract.

**E. SPECIAL TERMS AND CONDITIONS**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications about this Contract. All instructions, notices, consents, demands, or other communications required by this Contract shall be in writing and shall be made overnight courier service, or by first class mail, postage prepaid, address as may be hereafter specified by written notice. Both parties will have communications by other authorized individuals outside the legal specifications of this contract for reasons of fulfilling this agreement.

**Workforce Alliance:**

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**Contractor:**

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is confirmed telephonically by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of state and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Workforce Alliance reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the Workforce Alliance. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contractor. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the Workforce Alliance any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Authorized Individuals. Each party hereto has provided the other party hereto with a list identifying the individuals from whom the other party is authorized to accept any notices, requests, demands, or other advice which may be given hereunder by the party providing such list. Said lists, which are attached hereto as Attachment 2, shall be valid until revoked or amended by further written notice. The parties hereto shall only be entitled to rely on notices, requests, demands, or other advice given by such individuals.
- E.5. Equipment Acquisition. No equipment acquisition is allowed by this contract.

- E.6. **Work Papers Subject to Review.** The Contractor shall make all audit, accounting, or financial analysis notes, and other documents available for review by the Workforce Alliance, federal agency, or their authorized representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.
- E.7. **Prohibited Advertising.** The Contractor shall not refer to this Contract or the Contractor's relationship with the Workforce Alliance hereunder in commercial advertising in such a manner as to imply that the firm or its service are endorsed by the Workforce Alliance.
- E.8. **Confidentiality of Records.** Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the Workforce Alliance or acquired by the Contractor on behalf of the Workforce Alliance shall be regarded as confidential information in accordance with the provisions of state and Federal law and ethical standards. All necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with state and Federal law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the Workforce Alliance's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the Workforce Alliance to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the Workforce Alliance's information; or, disclosed by the Workforce Alliance to others without restrictions against disclosure.

It is expressly understood and agreed the obligation set forth in this section shall survive the termination of this Contract.

- E.9. **Hold Harmless.** The Contractor, to the extent allowed by applicable Kansas law, agrees to assume responsibility for any and all claims, liabilities, losses, and causes of action it incurs which may arise, accrue, or result to any person, firm corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract.

In the event of any such suit or claim, the Contractor shall give the Workforce Alliance immediate notice thereof and shall provide all assistance required by the Workforce Alliance's defense. The Workforce Alliance shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the Workforce Alliance in any legal matter, such rights being governed by Kansas Statutes Annotated.

- E.10. **Debarment and Suspension.** The Contractor certifies, to the best of its knowledge and belief, that it and its principals:
- a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
  - b) have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant 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;
  - c) are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
  - d) have not, within a three (3) year period preceding this Contract, had one or more public transactions (Federal, State, or Local) terminated for cause or default.

e) is current and not in default with any local, state, or federal taxes or fees.

E. 11. Grievances between Both Parties. Any complaint, protest or dispute arising out of this Contract between the Workforce Alliance and CONTRACTOR will be resolved using the Workforce Alliance's Complaint Grievance Procedure. The CONTRACTOR agrees to use the administrative process and negotiation in advance of litigation in attempting to resolve disputes arising from this Contract. The CONTRACTOR shall continue performance of the Contract activities during a dispute. Nothing in this paragraph shall imply that the CONTRACTOR is prevented from appealing Workforce Alliance decisions pursuant to the applicable Workforce Investment and Opportunity Act procedures.