

**GENERAL TERMS AND CONDITIONS**  
for  
**AGREEMENTS**  
under  
**THE WORKFORCE INNOVATION and OPPORTUNITY ACT**

**1 INTRODUCTION**

**1.1 Scope**

The purpose of this Agreement is to establish the general terms and conditions to which funding provided by the Employment Security Department (ESD) under Title I of the Workforce Innovation and Opportunity Act is subject to.

**1.2 Definitions**

“Contractor(s)” shall mean any entity receiving funding under this agreement for the purpose of providing goods or services that are not related to the carrying out of this Agreement.

“DOL” shall mean the United States Department of Labor.

“ESD” shall mean the Washington State Employment Security Department.

“ETA” shall mean the United States Department of Labor Employment and Training Administration.

“Grantee” shall mean the local workforce development board or other entity receiving funding under this Agreement.

“Materials” shall mean all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions.

“Negotiated Indirect Cost Rate” shall mean the Grantee’s maximum allowable costs allowed for indirect/administrative costs that have been developed and approved by the Cognizant Agency from which the Grantee receives the most funding in accordance with 2 CFR 200.

“RCW” shall mean the Revised Code of Washington.

“State- Level EO Officer” shall mean the Equal Opportunity Officer of who reports to the Governor or their designee and is responsible for State Program-wide coordination of compliance with the equal opportunity and nondiscrimination requirements in WIOA and 29 CFR Part 38.

“Subrecipient” shall mean any non-federal entity that receives funding from the Grantee to carry out any part of this Agreement, including, but not limited to, any non-federal entity that receives funding from Grantee to be a One-Stop Operator.

“WIA” shall mean the Workforce Investment Act (Public Law 105-220).

“WIOA” shall mean the Workforce Innovation and Opportunity Act (Public Law 113-128).

**1.3 Applicable Laws**

Throughout the term of this Agreement, Grantee shall comply will all applicable federal, state, and local laws, regulations, and policies. This includes, but is not limited to, Public Law 113-128(WIOA), Federal Uniform Administrative Requirements found in 2 CFR 200, both State and Federal Non-discrimination law, and all WIOA Title I and WorkSource System Policies.

**1.4 Assignment and Delegation**

The work to be provided under this Agreement and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

**1.5 Governing Law**

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington.

**1.6 Modification**

ESD may unilaterally modify the terms of this agreement when such modifications are required by controlling law. Such changes, including any increase or decrease in the amount of reimbursement, shall be incorporated as a written modification to the Agreement.

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

**1.7 Severability**

The provisions of this Agreement are intended to be severable. If any term or provision shall be held illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

**2 SUBAWARDS**

In the event the Grantee disburses any funding from this Agreement to a subrecipient, the Grantee shall be responsible for the subrecipient' s compliance with the same general terms and conditions contained in this Agreement and shall ensure that the subrecipient spends the funding only on WIOA allowable costs or for allowable WIOA activities.

**3 ASSURANCES**

ESD and the Grantee agree that all activity pursuant to this Agreement will be in accordance with all applicable current or future federal, state and local laws, rules and regulations.

The Grantee shall conduct the program in accordance with the existing or hereafter amended WIOA, DOL's regulations relating to WIOA, and the Washington State WIOA Title I and WorkSource System Policies.

As a condition to the award of financial assistance from the Department of Labor under Title I of WIOA, the Grant applicant assures that it has the ability to comply with the nondiscrimination and equal opportunity provisions of the following laws and will remain in compliance for the duration of the aware of federal financial assistance:

- A. Section 188 of the Workforce Innovation and Opportunity Act (WIOA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, or against beneficiaries on the basis of either citizenship status or participation in any WIOA Title I-financially assisted program or activity;

- B. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color, and national origin;
- C. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;
- D. The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and
- E. Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

The grant applicant also assures that, a recipient of WIOA Title I financial assistance, it will comply with 29 CFR part 38 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIOA Title I-financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIOA Title I-financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

#### **4 GRANTEE REGISTRATION**

If applicable, the Grantee shall complete registration with the Department of Revenue, Department of Labor and Industries, Department of Enterprise Services, Office of the Secretary of State and/or the Employment Security Department's Tax Administration by having filed a master business application prior to the execution of this Agreement and shall pay any taxes, fees or deposits required by the state as a condition of providing services under this Agreement. Grantee will provide ESD with its Washington Unified Business Identifier (UBI) number/or its Washington Industries account number and its Unemployment Insurance tax number, if registration with these agencies occurred prior to January 2, 1987. The required information will be provided prior to the Grantee's commencing services under this Agreement.

#### **5 CONFLICT OF INTEREST**

##### **5.1 Conflict of Interest**

Grantee shall take every reasonable course of action in order to maintain the integrity of this expenditure of public funds and to avoid any favoritism or questionable or improper conduct. This Agreement will be administered in an impartial manner, free from personal, financial, or political gain. The Grantee, its executive staff and employees, in administering this Agreement, will avoid situations that give rise to a suggestion that any decision was influenced by prejudice, bias, special interest, or personal gain. A conflict of interest arises when any of the following have a financial interest or other interest in the firm or organization selected for award.

- a. Individual;
- b. Member of the immediate family;
- c. Employing organization; or
- d. Future employing organization.

A Grantee cannot be involved with decision making if there is a direct financial benefit to themselves or immediate family. Membership on the State Board, a Local Board, or a Board standing committee does not by itself violate these conflict of interest provisions. Receipt of WIOA funds to provide training and related services, by itself, does not violate these conflict of interest provisions. Grantee must abide by WIOA Title I Policy 5405.

##### **5.2 Code of Conduct**

Grantee shall have a written Code of Conduct for procurement, award, and administration of contracts. The Code of Conduct regarding the conflict of interest shall contain penalties, sanctions or other disciplinary actions. The Code of Conduct shall apply to all of Grantee's staff, board members, volunteers, or other individuals involved in the procurement, award, or administration of contracts. The Code of

Conduct shall ensure that no one in a decision making capacity shall have a real or apparent conflict of interest in the selection, award, or administration of contracts or subcontracts.

### **5.3 Gifts**

Gratuities in the form of entertainment, gifts or otherwise offered by the Grantee, or an agent or representative of the Grantee to any officer or employee of ESD, with a view toward securing this Agreement or securing favorable treatment with respect to the awarding or amending or the making of any determination will render this Agreement voidable at the option of ESD.

### **5.4 Public Service Ethics**

Grantee shall comply with the Ethics in Public Service act of Chapter 42.52 RCW and all Washington State Procurement Ethics rules.

## **6 CONFLICTING PROVISIONS**

If any provision of this Agreement is allegedly in conflict with federal or state law, the conflict will be resolved by giving precedence in the following order:

1. Applicable Federal and Washington State Statutes and Regulations, including, but not limited to, the existing or hereinafter amended WIOA, DOL's regulations relating to WIOA, and the Washington State WIOA Title I and WorkSource Policies;
2. The Agreement and its modifications; and,
3. The Local Workforce Integrated Plan and its modifications for this Workforce Development Area retained by ESD and the Workforce Training and Education Coordinating Board (WTECB).

## **7 DEBARMENT AND SUSPENSION**

Grantee must not be debarred, suspended, or otherwise excluded from participation in Federal Assistance Programs under Executive Order 12549 and "Debarment and Suspension", Codified at 29 CFR part 98.

Grantee must not contract with any individuals or organizations who are debarred, suspended, or excluded from participating in Federal Assistance Programs.

Grantee must provide a signed statement, attached as Exhibit C to this Agreement that it is complying with the requirements of this section.

## **8 DISPUTE RESOLUTION**

### **8.1 Dispute Resolution**

In the event a dispute arises out of this Agreement between ESD and the Grantee, both parties agree to try negotiating in good faith to resolve the dispute before any subsequent action is taken. If no resolution can be obtained through this informal negotiation, WIOA Title I Policy 5410 shall govern the dispute resolution and appeals process.

### **8.2 Venue**

The venue of any action brought hereunder shall be the Superior Court for Thurston County.

### **8.3 Fees and Costs**

If any litigation arises out of this Agreement, each party shall be responsible for its own expenses, costs, and attorney fees.

## **9 ACCESS AND MONITORING**

### **9.1 Access to Facilities**

To the extent permitted by law, the Office of the State Auditor, DOL, the Comptroller General of the United States or any of their duly authorized representatives, and any persons duly authorized by ESD shall have full access to and the right to examine and copy any or all books, records, papers, documents and other material regardless of form or type which are pertinent to the performance of this Agreement,

or reflect all direct and indirect costs of any nature expended in the performance of this Agreement. In addition, these entities shall have the right, subject to conformance with Grantee's safety and security standards provided in advance to ESD and to the extent permitted by law, to access, examine, and inspect any site where any phase of the program is being conducted, controlled, or advanced in any way. Such sites may include the home office, any branch office, or other locations of the Grantee. Access shall be conducted at reasonable times and in a reasonable manner. Access is required to be granted as long as the records are retained and at no additional cost to ESD.

## **9.2 Audits**

To the extent permitted by law, at any time during normal business hours and as often as ESD, the Office of the State Auditor, DOL, the Comptroller General of the United States or any of their duly authorized representatives, and any other persons duly authorized by ESD deem necessary, the Grantee shall make its records available. To the extent permitted by law, these duly-authorized organizations shall have the authority to audit, examine, and make excerpts or transcripts from records including all contracts, invoices, papers, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by the Agreement. The Grantee will maintain its records and accounts in such a way as to facilitate the audit and ensure that Grantees also maintain records that are auditable. The Grantee is responsible for any audit exceptions resulting from its own actions or those of its sub-grantees.

The Grantee and its sub-grantees shall adhere to applicable federal Office of Management and Budget Circulars and other applicable federal and state regulations, including but not limited to, OMB 2 CFR 200. If the Grantee expends \$750,000 or more during the Grantee's fiscal year of federal award money, Grantee must comply with the Single Audit Act as supplemented by the audit requirements of 2 CFR 200, including but not limited to CFR 200.501-.521.

## **9.3 Records Storage**

The Grantee shall maintain its records and accounts in such a way as to facilitate any audits or examinations conducted in accordance with this Agreement or under applicable laws, regulations, or policies. Grantee shall also require that Subcontractors also maintain records that are auditable in accordance with Generally Accepted Accounting Principles.

## **9.4 Contractor Application**

Grantee shall include all the requirements of section 9 of this Agreement in all contracts or purchase orders with Contractors.

# **10 RECORDS**

## **10.1 Protection of Confidential information**

Grantee shall not publish, transfer, sell, or otherwise disclose any confidential information gained through this Agreement unless:

- a. Related to the purpose of this Agreement;
- b. Required by law; or
- c. Authorized by prior written approval of the person who is the subject of the confidential information.

Grantee shall maintain proper security measures to protect all confidential information.

## **10.2 Records Retention**

The Grantee shall:

- a. Retain all records pertinent to grants, grant agreements, interagency agreements, contracts or any other awards, including financial, statistical, property, and supporting documentation, for a period of at least three years after submittal of the final expenditure report (closeout) for that funding period to the awarding agency;

- b. Retain records for non-expendable property for a period of three years after final disposition of the property;
- c. Retain all program and data validation records pertinent to applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment for a period of not less than three years from the point that the record is no longer included in reportable outcomes (as opposed to the close of the applicant's program year);
- d. Retain records regarding complaints and actions taken on complaints for at least three (3) years from the date of resolution of the complaints;
- e. Retain all records beyond the required three (3) years if any litigation or audit is under way or a claim is instituted involving the grant or agreement covered by the records. The records must be retained for at least three (3) years after the litigation, audit, or claim has been resolved;
- f. Records regarding discrimination complaints and actions taken thereunder are confidential, and shall be maintained for a period of not less than three years from the final date of resolution of the complaint; and
- g. Comply with all other requirements of WIOA Title I Policy #5403.

### **10.3 Safeguarding of Client Information**

Without prior written consent by the recipient or client or as otherwise required by law, Grantee shall not use or disclose any information concerning a program recipient or client for any purpose not directly connected with the administration of the department's or the Grantee's responsibilities under this Agreement.

### **10.4 Procurement Records**

Grantee must maintain records detailing the history of all purchasing and procurement in which funds from this Agreement were used. This includes the rationale for the selected method of procurement, selection of contract type, basis for contractor selection or rejection, and basis for contract price.

## **11 ENERGY AND POLICY CONSERVATION**

The Grantee shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

## **12 ENVIRONMENTAL COMPLIANCE**

If Grantee is receiving over \$100,000 in federal grants under this Agreement, the Grantee shall comply with all applicable standards, Orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

## **13 FUNDING**

### **13.1 Funding Provided**

Funding made available through this Agreement is limited to the funding expressly provided in this agreement. Grantee will use the funding provided in this Agreement only on allowable costs. ESD will honor all allowable costs submitted within the funding period if funding is available.

### **13.2 Profit**

Any profit generated by funds made available under this Agreement must be used or returned to ESD in accordance with WIOA Title I Policy #5220.

### **13.3 Recapture**

Funding provided in this Agreement is subject to Recapture under WIOA Title I Policy #5275.

### **13.4 Indirect Cost Rate**

Grantee shall not spend funding obtained either through this Agreement or any other WIOA Grant or contract on indirect or administrative costs in excess of their Negotiated Indirect Cost Rate.

**13.5 Transfer of Funding**

Grantee may apply to ESD WIOA Grants and Contracts Administration Unit to transfer funding between adult employment and training activities and dislocated worker activities in the same program year. Grantee must obtain prior written approval from ESD before transferring any funding between program year programs. Details and application information is contained in WIOA Title I Policy #5401.

**13.6 Repayment of Disallowed Costs**

Grantee may be required to repay ESD for any costs that are determined by ESD to be a disallowable cost.

**14 CONFERENCES AND MEETINGS****14.1 Approval**

Conferences sponsored in whole or in part by the Grantee using funding obtained through federal awards are allowable only if the conference is necessary and reasonable for the successful performance of the Federal Award. Grantee must use discretion and judgment to ensure that all conference costs charged to the federal grant are appropriate and allowable and must comply with the requirements in 2. CFR 200.432. Costs that do not comply with 2 CFR 200.432 will be questioned and may be disallowed.

**14.2 Executive Branch Meetings**

The Grantee must not use any funds from this Agreement for the purpose of defraying the costs of a conference held by any Executive branch department, agency, board, commission, or office unless it is directly and programmatically related to the purpose this Agreement. No funds from this Agreement may be used for travel and conference activities that are not in compliance with Office of Management and Budget Memorandum M12-12 Date May 11, 2012. (P.L 113-6, 3003(c)(d)(e)).

**14.3 Hotel-Motel Fire Safety Act**

Pursuant to 15 U.S.C 2225(a), Grantee must ensure that all space for conferences, meetings, conventions or training seminars funded in whole or in part with funds from this Agreement complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (P.L. 101-391, as amended).

**15 GRANTEE STAFFING AND WORKPLACE****15.1 Drug-Free Workplace**

Grantee and any Contractors must comply with the government-wide requirements for a drug-free workplace, as codified at 29 CFR part 94 and 48 CFR part 23.504. These requirements include but are not limited to: (1) proper establishment, publishing and distribution of drug free workplace statement and drug-free awareness program, and (2) proper notification procedures of any employee violations. Failure to comply with these requirements may be cause for suspension or disbarment. All WIOA Title I grant recipients and sub-recipients must comply with the government-wide requirements for a drug-free workplace, codified at 29 CFR part 94 and 48 CFR part 23.504.

**15.2 Licensing**

Grantee shall comply with all applicable local, state, and federal licensing, accreditation, and registration requirements/standards necessary for performance under this Agreement.

**15.3 Salary and Bonus Limitations**

No funds received under this agreement may be used to pay for the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Legal II. This limitation does not apply to vendors providing goods and services as defined in OMB 2 CFR 200.

**15.4 Taxes**

Grantee shall be solely liable for payment of payroll taxes, unemployment contributions, and any other applicable taxes, insurance, or other expenses for the Grantee staff.

**15.5 Motor Vehicle Safety Policies**

Grantee is encouraged to develop policies and programs for the use of seat belts while driving and for the banning of cell phone use or texting while driving.

**15.6 Wages and Hours**

The Grantee shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by DOL regulations (29 CFR Part 5). (Construction contracts awarded by Grantees and Subrecipients in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers.)

Any wages paid by Grantee using funds from this Agreement shall be reasonable, necessary, and allocable for performance of this Agreement, and not in excess of the usual and accustomed wages for individuals with similar qualifications. Wages must also comply with the Washington State Minimum Wage Act, RCW § 49.46.

No funds obtained through this Agreement may be used to pay the wages of incumbent employees during their participation in economic development activities provided through statewide workforce delivery system.

**16 INSURANCE AND BONDING****16.1 Bonding**

The Grantee shall ensure that:

- a. Grantee has purchased fidelity bonding to protect against risk of loss from all officers, directors, employees, or other individuals who receive or deposit funds into program accounts, or issue other financial documents, checks, or other instruments of payments.
- b. Fidelity bonding secured pursuant to this Agreement must have coverage of \$100,000 or the highest planned advance or reimbursement for the program year, whichever is greater.
- c. If requested, the Grantee will provide a copy of the bonding instrument or a certification of the same from the bond issuing agency.

**16.2 Business Auto Policy**

The Grantee shall maintain automobile liability insurance, with a minimum limit of \$1,000,000, when vehicles owned or leased by the Grantee or its employees, Sub-grantees, or volunteers are used to provide services in performance of this Agreement.

**16.3 Commercial General Liability Insurance**

The Grantee shall at all times during the term of this Agreement, carry and maintain commercial general liability insurance that covers bodily injury, property damage and contractual liability with the following minimum limit: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000.

**16.4 Industrial Insurance Coverage**

The Grantee shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Grantee fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, ESD may collect from the Grantee the full amount payable to the Industrial Insurance accident fund.

ESD may:

- a. Deduct the amount owed by the Grantee to the accident fund from the amount payable to the Grantee by Agency under this Agreement; and
- b. Transmit the deducted amount to the Department of Labor and Industries (L&I), Division of Insurance Services.

This provision does not waive any of L&I's right to collect from the Grantee.

**16.5 Professional Liability Insurance**

The Grantee shall carry and maintain professional liability insurance. Such coverage shall cover losses caused by error and omissions in rendering professional services and shall have the following minimum



limits: \$300,000 per incident, loss or person. The Grantee shall ensure employees and any Subrecipients are covered by professional liability insurance.

## **16.6 Additional Provisions**

### **16.6.1 Excess Coverage**

The limits of all insurance required to be provided by the Grantee shall be no less than the minimum amounts specified.

### **16.6.2 Identification**

All insurance Policies shall reference this Agreement.

### **16.6.3 Insurance Carrier Rating**

The insurance required shall be issued by insurance companies authorized to do business within the State of Washington. Insurance is to be placed with an insurer that has a "Best" rating of A-, Class VII or better. Exceptions include placement with a "Surplus Lines" insurer or an insurer with a Best's rating lower than A-, Class VII.

### **16.6.4 Material Changes**

ESD shall be given advance notice of any material change to insurance policies coverage for services provided under this Agreement.

### **16.6.5 Self-Insured**

If self-insured, the Grantee warrants that it will maintain coverage sufficient to cover any liability specified above that may arise from the performance of this Agreement, and that the Grantee's Risk Officer or appropriate individual will provide ESD evidence of such insurance.

If requested, the Grantee will provide ESD with a copy of the applicable insurance face sheet(s) or certification of self-insurance reflecting this coverage. Insurance coverage(s) must be effective no later than the effective date of the Grantee Agreement and for the term of the Agreement.

## **17 INTELLECTUAL PROPERTY RIGHTS**

### **17.1 Federal Requirements**

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: i) the copyright in all products developed under this Agreement, including a sub-grant or contract under the grant or sub-grant; and ii) any rights of copyright to which the grantee, sub-grantee or a contractor purchases ownership under an award (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. Federal funds may not be used to pay any royalty or licensing fee associated with such copyrighted material, although they may be used to pay costs for obtaining a copy which is limited to the developer/seller costs of copying and shipping. If revenues are generated through selling products developed with grant funds, including intellectual property, these revenues are program income. Program income is added to the grant and must be expended for allowable grant activities.

If applicable, the following needs to be on all products developed in whole or in part with grant funds: "This workforce solution was funded by a grant awarded by the U.S. Department of Labor's Employment and Training Administration. The solution was created by the grantee and does not necessarily reflect the official position of the DOL. DOL 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. This solution is copyrighted by the institution that created it. Internal use, by an organization and/or personal use by an individual for non-commercial purposes, is permissible. All other uses require the prior authorization of the copyright owner."

### **17.2 Ownership of Materials**

Unless otherwise provided, and subject to the other requirements listed in this Agreement, Grantee shall retain ownership of all material it creates using funds from this Agreement.

### **17.3 Licensing of Materials.**

Grantee shall license to the public all Materials created or modified using funds from this Agreement under the Creative Commons Attribution License.

For Materials created using funds from this Agreement, or that were developed using WIA or WIOA funding, Grantee hereby grants to ESD a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Grantee warrants and represents that Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to ESD.

## **18 INTERNAL CONTROLS**

Grantee must develop and maintain an internal control structure and written policies that are in compliance with the “standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework,” issued by the Committee of Sponsoring Organizations of the Treadway Commission. These internal controls are needed to provide safeguards to protect personally identifiable information, records, contracts, grant funds, equipment, sensitive information, tangible items, and other information that is readily or easily exchanged in the open market, or that ESD or the grantee or sub-recipient considers to be sensitive, consistent with applicable Federal, State and local privacy and confidentiality laws.

These internal controls must include assurance that the Grantee is:

- a. Managing funds under this Agreement in compliance with federal statutes, regulations, and the terms of this Agreement;
- b. Complying with federal statutes, regulations, and the terms and conditions of the federal award;
- c. Evaluating and monitoring sub-recipients’ compliance with applicable laws and terms of this Agreement; and
- d. Taking prompt action when instances of noncompliance are identified.

## **19 LIMITATIONS ON CONSTRUCTION AND REPAIR**

### **19.1 Copeland Anti-Kickback Act**

The Grantee shall comply with the Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in DOL regulations (29 CFR Part 3) for all contracts and sub-grants for construction or repair.

### **19.2 Davis-Bacon Act**

The Grantee shall comply with the Davis-Bacon Act (40 U.S.C. 276a-7) as supplemented DOL regulations (29 CFR Part 5) for all contracts and sub-grants for construction or repair in excess of \$2,000.

### **19.3 Flood Insurance**

No funds obtained through this Agreement may be used to acquire, modernize, or construct property in identified flood-prone communities, unless the community participates in the National Flood Insurance program and flood insurance is purchased within one year of the identification. Lists of flood-prone areas that are eligible for flood insurance are published in the Federal Register by FEMA.

### **19.4 Funding for Construction**

Unless specified otherwise in this Agreement, Grantee shall not spend any funds from this Agreement on construction or purchasing of facilities or buildings, or other capital expenditures for improvement to land or buildings.

Any new facilities designed or constructed with funds from this Agreement must comply with: The Architectural Barriers Act of 1968, 42 U.S.C. 4151, as amended, the Federal Property Management

Regulations (see 41 CFR 102-76), and the Uniform Federal Accessibility Standards issued by GSA (See CFR 36 CFR 1191).

### **19.5 Religious Construction**

Grantee shall not use any funds made available through this Agreement for the construction, operation, or maintenance of any part of any facility used for sectarian instruction or used as a place for religious worship. However, maintenance of facilities that are not primarily used for instruction or worship and are operated by organization providing services to WIOA participants may be allowed.

## **20 LIMITATIONS ON FUNDING PROVIDED**

### **20.1 ACORN Prohibition**

No funds made available under this Agreement may be provided to the Association of Community Organizations for Reform Now (ACORN), or any of its affiliates, subsidiaries, allied organizations, or successors.

### **20.2 Business Relocation**

No funds obtained through this Agreement may be used to: (1) Encourage or induce any business or part of a business to relocate from any location in the United States, if that relocation will result in any employee losing their job; or (2) provide customized training, skill training, on-the-job training, incumbent worker training, transitional employment, or company specific assessment of job applicants for employees of any business that has relocated from any location in the United States for 120 days after the relocation, if the relocation resulted in an employee losing their job at the original location.

### **20.3 Religious Activity Trainings**

Grantee shall comply with the requirements of 29 CFR part 2, subpart 2 which governs circumstances when any funds made available through WIOA and this Agreement may be used to employ or train participants in religious activities.

### **20.4 Health Benefits Coverage**

The Grantee shall ensure that the use of funds obtained through this Agreement used for Health Benefit coverage complies with 506 and 507 of Division G of Public Law 113-235, the Consolidated and Further Continuing Appropriation Act, 2015.

### **20.5 Trafficking in Persons**

No funds obtained through this Agreement may be used to traffic in persons as defined in DOL Standard Federal Award Terms & Conditions found at <http://doleta.gov/grants/resources.cfm>.

## **21 LOBBYING**

### **21.1 Restrictions on Lobbying**

Grantee shall comply with lobbying restrictions set forth in WIOA; 29 CFR Part 93 (New Restrictions on Lobbying) and any subsequent updates; and RCW 42.17A. Grantee shall also make available upon request required disclosure information if the Grantee participates in lobbying activities during the grant period.

### **21.2 Certification**

Grantee shall provide, in Exhibit B to this Agreement, its certification that it is in compliance with the lobbying restrictions listed in WIOA and 29 CFR Part 93.

### **21.3 Publicity**

No funds provided under this Agreement shall be used 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 or any state or local legislature or legislative body, except in presentation to the Congress or any state or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any state or local government, except in presentation to the

executive branch of any state or local government itself. Nor shall funds be used to pay the salary or expenses of any recipient or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive Order proposed or pending before the Congress, or any state government, state legislature, or local legislature body other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a state, local, or tribal government in policymaking and administrative processes within the executive branch of that government.

## 22 NONDISCRIMINATION

Grantee shall comply with all nondiscrimination requirements listed in this agreement, as well as all federal and state nondiscrimination laws, including but not limited to, Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972; and the Americans with Disabilities Act of 1990, Section 188 of WIOA and any DOL regulations relating to Section 188.

The Grantee must not discriminate in any of the following areas:

- a. Deciding who will be admitted, or have access, to any WIOA Title I-financially assisted program or activity;
- b. Providing opportunities in, or treating any person with regard to, such a program or activity; or
- c. Making employment decisions in the administration of, or in connection with, such a program or activity.

The Grantee also ensures that it will comply with 29 CFR Part 38; including the Nondiscrimination Plan developed by the Washington Employment Security Department and any WIOA policies and procedures issued.

### 22.1 Discrimination

No individual in the United States may, on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or for beneficiaries on the basis of citizenship status or participation in any WIOA Title I-financially assisted program or activity; be excluded from participation in, denied benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIOA Title I-financially assisted program or activity.

### 22.2 Program Participation

As long as an individual meets the other program requirements, participation in any programs funded in whole or in part by this Agreement shall be available to all citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees and other immigrants authorized by the Secretary of Homeland Security to work in the United States.

### 22.3 Notification

The Grantee shall post the attached "Equal Opportunity is the Law" notice prominently in reasonable numbers and places and in available and conspicuous physical locations; on the recipient's website; shall disseminate the notice in internal memoranda, other written or electronic communications; shall include the notice in handbooks or manuals; make the notice available during orientations and to each participant. A signed copy of the notice will also be made a part of the participant's electronic and paper files. All medical information and/or information regarding a participant's disability must be kept confidential and maintained in a file that is separate from the participant's file.

The Grantee shall include the following Equal Opportunity tagline in recruitment brochures and other materials that are ordinarily distributed or communicated in written and/or oral form, electronically

and/or on paper, to staff, clients, or the public at large, to describe WIOA Title I financially assisted programs or activities or the requirements for participation by recipients and participants.

“(NAME OF ORGANIZATION) is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.”

Where such materials indicate that the recipient may be reached by voice telephone, the materials must also prominently provide the relay number: Washington Relay Service 711.

#### **22.4 Reporting**

The Grantee shall promptly notify the State-Level EO Officer of any administrative enforcement actions or lawsuits filed against it alleging discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief; or, for beneficiaries, applicants, and participants only, on the basis of citizenship or participation in a WIOA Title I-financially assisted program or activity. The State-Level EO Officer will notify the Commissioner of Employment Security Department (ESD) and the Civil Rights Center (CRC).

### **23 PERFORMANCE STANDARDS**

Grantee shall comply with the applicable requirements of WIOA section 116. This includes, but is not limited to the tracking, recording, and reporting on their performance accountability measures. Grantee must also enter all necessary data for federal reporting and performance accountability measures into SKIES or WorkSource WA Case Management Systems or their successors.

### **24 PUBLIC ANNOUNCEMENTS**

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, Grantee shall clearly state: (1) the percentage of the total cost of the program or project which will be financed with Federal money; (2) the dollar amount of Federal funds for the project or program; and (3) the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

### **25 PURCHASING AND CONTRACTING REQUIREMENTS**

#### **25.1 Buy American Act**

Purchases made under this Agreement using funds made available under WIOA or the Wagner-Peyser Act ( 29 U.S.C. 49 et seq.) shall comply with sections 8301 through 8303 of title 41, United States Code (commonly known as the “Buy America Act”).

Any person who a court or Federal Agency has determined in final judgment of selling or shipping any good with a false label of being a product made in America shall be ineligible to receive any contract or subcontract with funds made available under this Agreement.

#### **25.2 Procurement Requirements**

All purchasing of goods and services by Grantee using funds made available through this Agreement must be done in accordance with 2 CFR 200.317-.326 and other applicable federal and Washington state purchasing laws, policies, and regulations. These purchasing requirements include, but are not limited to:

- a. Maintaining a procurement policy that complies with the requirements contained in 2 CFR 200.318;
- b. Complying with competition requirements of 2 CFR 200.319;
- c. Following the proper method of procurement as identified in 2 CFR 200.320, including but not limited to following the simplified acquisition threshold;
- d. Providing adequate opportunities for small and minority business, women’s business enterprise, and labor surplus area firms through the process identified in 2 CFR 200.321; and
- e. All procurement of professional services must be done in accordance with 2 CFR 200.459.

Grantee is also encouraged to provide subcontracting opportunities to Historically Black Colleges and Universities, and other Minority Institutions such as Hispanic-Serving Institutions and Tribal Colleges and Universities.

### **25.3 Prohibition on Contracting with Corporations with Felony Criminal Convictions**

The Grantee must not knowingly enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that was convicted of a felony criminal violation under any Federal law within the preceding twenty-four (24) months.

### **25.4 Prohibition on Contracting with Corporations with Unpaid Tax Liabilities**

The Grantee must not knowingly enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that has any unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely matter pursuant to an agreement with the authority responsible for collecting the tax liability.

### **25.5 Prohibition on Contracting with Inverted Domestic Corporations**

No funds made available under this Agreement may be used for any contract with any foreign incorporated entity which is treated as an inverted domestic corporation under section 535(b) of the Homeland Security Act of 2002( 6 U.S.C. 395(b)) or any subsidiary of such an entity.

### **25.6 Oversight**

Grantee must maintain oversight over all contracts. This includes, but is not limited to, monitoring contractor performance regarding contract terms, conditions, and specifications.

### **25.7 Equipment and Supplies**

#### **25.7.1 Acquisition**

Grantee must receive prior approval from ESD for the purchase of any equipment with a per unit acquisition cost of \$5,000 or more, and a useful life of more than one year using funds obtained through this Agreement. This includes the purchases of automatic data processing equipment. Equipment purchases must be made in accordance with 2 CFR 200.313 or 2 CFR 200.439. This Agreement does not give approval for equipment specified in an awardee's budget or statement of work unless specifically approved.

#### **25.7.2 Equipment Management**

All equipment purchased with funds obtained through this Agreement must be managed in accordance with 2 CFR 200.313. This includes, but is not limited to:

- Maintaining records of the property that includes description of the equipment, title, cost, grant award contribution, and identifiable information;
- Conducting inventory of equipment at least every two years;
- A control system developed to adequately safeguard property;
- Proper maintenance of the equipment; and
- Disposal of equipment in accordance with federal and state law.

#### **25.7.3 Supplies**

Title to Supplies acquired with funding provided under this Agreement shall vest with the Grantee at acquisition. A residual inventory of unused supplies exceeding \$5000 in value at the time of completion of this Agreement must be used by the Grantee on other federal projects, or sold. As long as the DOL retains an interest in the supplies, they must not be used to provide services for a fee that is less than private companies charge for equivalent services.

### **25.8 Recovered Materials**

Purchases made pursuant to this Agreement must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, which requires purchases of items over \$10,000 to contain the highest percentage of recovered materials while maintain satisfactory level of completion. Guidelines for recovered materials are found in 40 CFR part 247.

## **26 RELATIONSHIP OF THE PARTIES**

### **26.1 Independent Contractor**

The parties intend that an independent Contractor relationship will be created by this Agreement. The Grantee and his or her employees or agents performing under this Contract are not employees or agents of ESD. The Grantee will not hold himself/herself out as, nor claim to be an officer or employee of, ESD or of the state of Washington by reason hereof, nor will the Grantee make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Grantee.

### **26.2 Indemnification**

Each party to this Agreement shall be responsible for its own acts and/or omissions and those of its officers, employees and agents. No party to this agreement shall be responsible for the acts and/or omissions of entities or individuals not a party to this agreement. In the case of negligence of both ESD and the Grantee, any damages allowed shall be levied in proportion to the percentage of negligence attributed to each party.

## **27 REPORTING**

### **27.1 Closeout**

Grantee shall comply with WIOA Title I Policy #5245 regarding the closeout of this Agreement. This includes, but is not limited to, completing a formal closeout within sixty calendar days, or as otherwise instructed, after the end of this Agreement, or when the funding is fully utilized, whichever comes first.

### **27.2 Quarterly Reports**

Grantee must submit quarterly financial reports to the ESD budget office. These reports should be sent via email by the Grantee to [SASEFTQuarterly@esd.wa.gov](mailto:SASEFTQuarterly@esd.wa.gov). These reports must comply with WIOA Title I Policy #5240.

### **27.3 Certifications**

Any annual and final fiscal reports or vouchers requesting payment under this Agreement must include a certification, signed by an official who is authorized to legally bind the Grantee, which reads: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise."

### **27.4 Cost Rates**

Grantee must submit an approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government. If no such rate exists Grantee must submit to the ESD Budget Office upon contract execution either a rate negotiated between the pass-through entity and the subrecipient, or a de minimis indirect cost rate as defined in 2 CFR Part 200.414 – Indirect Facilities and Administrative costs.

## **28 MILITARY SELECTIVE SERVICE**

Grantee shall ensure that any individual participating or receiving any benefit from funds made available through this contract has complied with the Military Selective Service Act.

**29 VETERANS PRIORITY**

The Jobs for Veterans Act (Public Law 107-288) requires Grantee to provide priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by DOL. The regulations implementing this priority of service can be found at 20 CFR part 1010. In circumstances where a grant recipient must choose between two qualified candidates for a service, one of whom is a veteran or eligible spouse, the veterans priority of service provisions require that the grant recipient give the veteran or eligible spouse priority of service by first providing him or her that service. To obtain priority of service, a veteran or spouse must meet the program's eligibility requirements. Grantee must comply with DOL guidance on veterans' priority. ETA's Training and Employment Guidance Letter (TEGL) No. 10-09 (issued November 10, 2009) provides guidance on implementing priority of service for veterans and eligible spouses in all qualified job training programs funded in whole or in part by DOL. TEGL No. 10-09 is available at [http://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=2816](http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2816).

**30 VIOLATION OF PRIVACY ACT**

No funds made available under this Agreement may be used in contravention of the 5 U.S.C. 552(a) or regulations implementing that section.

**31 USE OF NAME PROHIBITED**

The Grantee shall not in any way contract on behalf of or in the name of ESD.

**32 USE OF STATE RESOURCES**

Grantee and any Subrecipients shall comply with ESD WIOA Policy #5408 and ESD Policy and Procedure #2015 when using state-owned information technology resources.

**33 WAIVER**

A failure by ESD to exercise its rights shall not constitute a waiver of any rights under this Agreement unless stated to be such in writing signed by an authorized representative of ESD and attached to the original Agreement.



**Certification Regarding Lobbying**

**APPENDIX A TO TITLE 29, PART 93 - CERTIFICATION REGARDING LOBBYING**  
*Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned (i.e., the Contractor signatory) certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of 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, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal 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 Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Contractor acknowledges that this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into, that submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C., and that any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

### Certification Regarding Debarment and Suspension

APPENDIX A TO TITLE 29, PART 98 - CERTIFICATION REGARDING DEBARMENT AND SUSPENSION - *Certification for Contracts, Grants, Loans, and Cooperative Agreements*

1. The undersigned (i.e., the Contractor signatory) certifies, to the best of his or her 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 department or agency;
  - B. Have not 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;
  - C. Are not 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,
  - D. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation of this proposal (or plan).

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED