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| TITLE: | General Terms and Conditions | PROGRAM: | All Programs |
| EFFECTIVE DATE: | 07/01/2015, 07/01/2022 | REVISIONS: | 05/05/2022, 07/01/22 |

1. Definitions

The following terms will have the meaning as set forth below:

- a. “May” is permissive.
- b. “Will” is imperative.
- c. “Subcontract” will mean any contract, agreement, or purchase entered into by the Contractor with a third party for the purpose of procuring property and/or services under this contract.

2. Change

Changes can be made to the contract in any of the following ways:

- a. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
- b. The New River/Mount Rogers Workforce Development Area Consortium (Consortium) staff representative may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Consortium a credit for any savings. Said compensation shall be determined by one of the following methods:
 1. By mutual agreement between the parties in writing; or
 2. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. The contractor shall present the Consortium with all vouchers and records of expenses incurred and savings realized. The Consortium shall have the right to audit the records of the contractor, as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Consortium within thirty (30) days from the date of receipt of the written order from the Consortium. If the parties fail

to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedure for resolving disputes provided by the Disputes Clause of this contract. Neither the existence of a claim nor a dispute resolution process, litigation or any other provisions of this contract shall excuse the contractor from promptly complying with the changes ordered by the Consortium or with the performance of the contract generally.

3. Stop Work/Suspension of Performance

The Consortium Staff Representative may issue a stop performance notice at any time. The Contractor, upon receipt of such written notice, will immediately stop performance on the date specified in the notice and incur no further costs and will not undertake any further performance until directed to do so in writing by the Consortium Staff Representative. Any costs incurred or performances done by the Contractor after receipt of a stop performance notice is at the sole risk of the Contractor. Under no circumstances will a stop performance notice be used to terminate a contract. In any case, where it is determined that performance will not be permitted to be resumed; a formal termination notice will be issued.

4. Termination of Convenience

- a. The Consortium Staff Representative reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is more than 12 months, either party, without penalty, may terminate the resulting contract after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- b. After receipt of the Notice of Termination, the Contractor will cancel outstanding commitments covering the procurement or rental of materials, supplies, equipment, and miscellaneous items. In addition, the Contractor will exercise all reasonable diligence to accomplish the cancellation or diversion of outstanding commitments covering personal services that extend beyond the date of such termination to the extent that they relate to the performance of any work terminated by the notice. With respect to such canceled commitments, the Contractor agrees to each of the following:
 1. Settle all outstanding liabilities and all claims arising out of such cancellation of commitments.
 2. Assign to the Issuing Activity in the manner, at the time, and to the extent directed by the Consortium Staff Representative all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated. At its direction, the Issuing Activity will have the right to settle or pay any or all claims arising out of the termination of such order and subcontracts.

5. Termination of Default

If the Contractor fails to perform under this contract or fails to make satisfactory progress so as to endanger performance, the Consortium Staff Representative will advise the Contractor in writing and the Contractor has ten (10) days from receipt of such notice to correct the condition. If the deficiency is not satisfactorily remedied, the Contractor may be determined to be in default and the contract may be terminated by the Consortium Staff Representative through written notice.

In the event of such termination, the Contractor will be paid to the date of termination of such work as has been properly performed hereunder in accordance with the payment provisions. Should it finally be determined that the Contractor has, in fact, performed properly, and then the termination will be treated as a termination for convenience.

6. Disputes

- a. Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract, which is not disposed of by agreement, will be decided by the Consortium Staff Representative, who will reduce the decision to writing and mail or otherwise furnish a copy of it to the Contractor. The decision of the Consortium Staff Representative will be final and conclusive unless, within thirty (30) calendar days from date of receipt of such decision, the Contractor mails or otherwise furnishes to the Consortium Staff Representative a written appeal addressed to the Issuing Activity. The decision of the Issuing Activity, or its duly authorized representative for the determination of such appeals, will be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, so grossly erroneous as to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor will be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor will proceed diligently with the performance of the contract and in accordance with the Consortium Staff Representative's decision.
- b. The "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph "a" above; PROVIDED that nothing in this contract will be construed as making final the decision of any administrative official, representative, or board on a question of law.

7. Contract Modifications

Modifications to this contract can be effected only through the following methods:

- a. The Consortium Staff Representative, when necessary, will modify the contract:
 1. By use of the "Changes" clause, or
 2. For administrative reasons (such actions have no effect on performance required or terms of the contract).

- b. The Contractor may recommend revisions to the Consortium Staff Representative. When the Contractor desires to recommend revisions to the Consortium Staff Representative, the recommendation will be submitted in writing with complete budget adjustment. The Contractor will submit the applicable revised budget page(s) with the recommendation. No modification to the contract may be implemented until finalized, unless specific written permission is granted by the Consortium Staff Representative.

8. Financial Limitation

The Issuing Activity will have no liability for any costs incurred above the ceiling limit shown in Block 13 of the Proposal and Award Sheet for this contract. Any costs incurred by the Contractor above that limit during the performance period, as specified in Block 7 of the Proposal and Award Sheet will be at the sole risk of the Contractor. This in no way restricts the right to increase the ceiling by mutual consent of both parties; provided such an increase was accomplished prior to any incurred cost exceeding the existing ceiling.

9. Eligibility Certification

The Contractor agrees that all participants in this contract must be certified eligible. Eligibility will be performed and documented by the Contractor with periodic review by Consortium staff. Any repayment of funds resulting from WIOA services provided to an ineligible participant will be the responsibility/liability of the Contractor.

10. Equal Opportunity and Nondiscrimination

- a. The Contractor agrees to comply with Equal Opportunity and Nondiscrimination requirements as follows:
 1. Equal Opportunity: Section 188 of the Workforce Innovation and Opportunity Act of 1998 (WIOA) prohibits discrimination against all individuals in the United States on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship or participation in any WIOA Title I-financially assisted program or activity. Prohibitions against discrimination are made on the basis of the following:
 - Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color, and national origin, which includes discrimination affecting persons with limited English proficiency;
 - Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;
 - The Age Discrimination Act or 1975, as amended, which prohibits discrimination on the basis of age;
 - And Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in education programs.

2. The Contractor will provide an explanation of clients rights and protections under 29 CFR Part 38 to each client. Additionally the Contractor will provide a copy of Virginia's Equal Opportunity Notice (English or Spanish version) to each client and maintain a copy in each client's file.
 3. The CONTRACTOR shall comply with Section 188 of the Workforce Innovation and Opportunity Act, and Title VI of the Civil Rights Act as noted above, as well as guidance regarding services and access for persons with limited English proficiency, to the extent they apply to the subject matter of this contract. Specific guidance is provided at Part IV, Department of Labor Federal Register/Volume 68, No. 103, issued Thursday, May 29, 2003, and Department of Health and Human Services Federal Register/Volume 65, No. 169, August 30, 2000 and Department of Health and Human Services Federal Register Volume 68, Number 153, August 8, 2003.
- b. Participants under this program will be subject to the same rules and regulations, and will receive no less than those benefits/services of other employees similarly employed or trainees of the Contractor.
 - c. Contractor will also comply with the requirements of the Virginia Fair Employment Act.

11. Grievances or Complaints

All grievances or complaints, if not satisfied through informal discussion with appropriate supervisors, will be filed in accordance with Contractor's established grievance procedures. Appeals to decision rendered will be processed in accordance with the procedures provided by the Consortium Staff Representative.

12. Whistleblower Protection

This grant, the Contractor, and all employees working on this grant are subject to the whistleblower rights and remedies established at 41 U.S.C. 4712. The Contractor shall inform its employee in writing, in the predominant language of the workforce of employee whistleblower rights and protections under 41 US.C. 4712, as described in Section 3.908 of the Federal Acquisition Regulation (48 CFR 3.908); note that for the purpose of this term and condition, use of the term "contract", "contractor", "subcontract", or "subcontractor" in section 3.908 should be read as "grant", "grantee", "subgrant", or "subgrantee"). The Contractor shall insert the substance of this clause in all subgrants and contracts over the simplified acquisitions threshold.

13. Availability of Funds

It is understood and agreed between the Contractor and the Workforce Development Area Consortium that the Workforce Development Area Consortium will be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this contract.

14. Accountability for Funds

The Contractor agrees to receive, administer, disburse, and account for the said funds and such property as may be acquired therewith or otherwise be placed under its control in accordance with all applicable local, state, and federal requirements. By receipt of said funds, the Service Provider will be accountable for mis-expenditure of said funds. Any required repayment will not be by or from federal funds.

15. Cost Liability

Neither the Governor, the Commonwealth of Virginia, nor the New River/Mount Rogers Workforce Development Area Consortium assumes liability by virtue of this contract for any costs incurred above the amount provided pursuant to this contract for costs incurred by the Contractor that are determined to be unallowable. Any such costs will be at the sole risk of the Contractor. The foregoing provisions of this paragraph are not intended to preclude and will not be deemed to preclude the Contractor from asserting any defense that may be asserted hereafter.

The Contractor is responsible to ensure that all known outstanding financial obligations under this contract, except for wages and salaries incurred, have been paid within 60 days after the contract ending date. Upon expiration of this 60 day period, the Issuing Activity no longer has any liability for such costs, and they become the sole financial responsibility of the Contractor. Furthermore, any contract funds in the possession of the Contractor for these obligations revert to the control of the Issuing Activity and must be returned immediately, unless specifically directed otherwise in writing by the Consortium Staff Representative. In the event unusual circumstances indicate the Contractor may have difficulty satisfying such obligations within the specified time allotted, he must notify the Consortium Staff Representative in writing within 30 days after the contract ending date. Such notification will in no way be construed as relieving the Contractor of stated responsibility and liability nor as any acceptance of liability on the part of the Issuing Activity after expiration of said 60 day period.

16. Allowable Costs

- a. Funds granted under the Workforce Innovation and Opportunity Act may be expended only for purposes specified in this contract.
- b. The program activities against which program costs will be allocated, controlled, and reported are as directed in applicable regulations.

17. Payments

Payments for contract services shall be cost reimbursement only.

No payment shall be due the Contractor for work performed prior to the effective date nor beyond the termination date of the contract. Advance payment status shall be requested subject to approval by the Consortium Staff Representative.

18. Withholding of Payment

Payment of final invoice may be withheld until the Contractor has completed required actions to close out the contract.

19. Property Accountability

- a. All consumable property acquired through cost reimbursement contracts, unless specifically exempted, shall revert to the Issuing Activity upon the termination of this contract. The Issuing Activity may, however, assign such property to the Contractor for use under another or a subsequent contract. Subsequent to closeout of this contract, the Issuing Activity is responsible for the relocation/disposal of all remaining property purchased under this contract.
- b. The Contractor assumes responsibility for inventory control, maintenance, and physical security of non-consumable Consortium property.
- c. For those Contractors on cost reimbursement, all requirements for purchase or rental of non-consumable property for direct WIOA activities must be approved by the Consortium Staff Representative (or duly-authorized representative) prior to purchasing or any commitment to purchase or acquired. (Approval of budget figures for purchasing and/or renting non-consumable property does not constitute approval for purchase or rental.)
- d. Intangible Property:
 1. Inventions and Patents -- The Contractor will report promptly and fully to the Consortium any program which produces patentable items, patent rights, processes or inventions in the course of work under the WIOA contract. Unless the Contractor and the Consortium previously agreed on the disposition, the Consortium will determine whether protection of the invention or discovery will be sought. The Consortium will also determine how the invention or discovery rights, including rights under any patent issued thereon, will be allocated and administered.
 2. Copyrights -- Unless otherwise provided in the terms and conditions of the contract, the Contractor may copyright material or permit others to do so for copyrightable material developed under a contract. If any material developed under a WIOA contract is copyrighted, the Department of Labor will have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, and otherwise use, and authorize others to use, the work for federal purposes.

20. Loss or Theft of Federal Property

All equipment or other non-consumable property purchased through cost reimbursement contracts is Consortium property. In any instance of loss or theft of such property, the Contractor will take the following minimum actions:

- a. Report the loss or theft to local police and request a copy of the police report; and

- b. Report the loss or theft in writing to the Consortium Staff Representative with a copy to the Contractor's file. Include in the report at least the following:
 1. A description of the missing article of property including the cost, serial number, WIA tag numbers, and other such pertinent information;
 2. A description of the circumstances surrounding the loss or theft; and
 3. A copy of the police report or, should the police not make such information available, a description of the report made to the police, including the date and name of the police officer who declined to make the police report available.

21. Reporting Requirements in General

Each Contractor will submit periodic reports as requested. Other requested information will be submitted no later than the date specified at the time of the request.

22. Retention of Records

- a. Records will be retained in accordance with established requirements. Contractor will notify the Consortium Staff Representative prior to destroying any records pertinent to the contract. Participant records must be retained for a minimum of three (3) years after completion of last clean audit while financial records must be retained for a minimum of five (5) years. Both participant and financial records should be maintained in a secured locked file cabinet or other secured arrangement.
- b. Records will be retained if audit findings have not been resolved until such time as the requirements in (a) above have been met.

23. Confidentiality of Records

The Contractor will not divulge any information regarding applicants, participants, or their families without the express written permission of the applicant or participant. Based on written agreements that ensure the privacy of program data, the contractor will provide information necessary for the purposes related to the performance or evaluation of the contract. Participant information/data may be divulged to parties having responsibilities under the contract for monitoring or evaluating the services and performances of the contract, to the Consortium Staff Representative (or duly-authorized representative) or to governmental authorities to the extent necessary for proper administration of the law.

The contractor will make available to members of the public, who request them, the names of all individuals employed in staff positions. If the participant provides express documented permission to the contractor, the contractor may make available to the public information regarding the participant to the extent the permission allows.

24. Legal Actions

The Contractor agrees to give the Issuing Activity immediate notice in writing of any action or suits filed and prompt notice of any claims made against the Contractor, Subcontractor(s), or any of the parties involved in the implementation and administration of the WIOA program.

25. Right of Access

The VCCS, the U.S. Secretary of Labor, the Comptroller General of the United States, the Workforce Investment Area Consortium, or any of their representatives will have access to work and training sites and to any books, documents, papers, and records (including computer records) of the Subcontractor(s) which are directly pertinent to this contract, in order to conduct audits and examinations and to make excerpts, transcripts, and photocopies. This right also includes timely and reasonable access to the personnel for the purpose of interviews and discussions related to such documents. The right of access is not limited to the required retention period (five years), but will last as long as the records are retained.

26. Inspections

- a. All Contractor operations incident to performance under this contract will be subject to inspection by the Consortium Staff Representative (or duly-authorized representative) to the extent reasonable and practicable at all times and places during the contract period. Instances of Contractor non-compliance with requirements of this contract will be properly corrected. Failure to correct these discrepancies promptly is cause for termination of this contract for fault, as provided under "Termination for Default."
- b. The inspections by the Consortium Staff Representative (or duly-authorized representative) do not relieve the Contractor from any responsibility for failure to meet contract requirements, which may be discovered at a later date.

27. Liability Clause

The Issuing Activity has no liability with respect to bodily injury, illness, or any other damages or loss to person or property, or claims in respect to any such injury, illness, damages, or losses whether concerning persons or property in the Contractor's organization or third parties. The Contractor will obtain a public liability insurance policy in accordance with Virginia State law. Premiums chargeable for the insurance will be paid by the Contractor.

28. Assurances

The Contractor assures that he/she:

- a. Will fully comply with the Workforce Innovation and Opportunity Act, all federal regulations issued pursuant to the Grant, and all state and Issuing Activity policies and requirements.
- b. Will establish and use internal program management procedures sufficient to prevent fraud and program abuse.

- c. Will maintain auditable and otherwise adequate records, which support the expenditure of all funds under its contract.
- d. Will comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) as it requires removing all architectural barriers to the handicapped.
- e. Will comply with the child labor requirements of the Fair Labor Standards Act or the Child Labor Laws of Virginia, whichever is more restrictive.
- f. Will comply with the provisions of the Hatch Act, which limits the political activity of certain state and local government employees.
- g. Will, for contracts in excess of \$100,000, or if a facility to be used has been the subject of a conviction under the Clean Air Act [42 U.S.C. 1857-8(c)(1)] or the Federal Water Pollution Control Act [33 U.S.C. 1319(c)] and is listed by the Environmental Protection Agency (EPA) or is not otherwise exempt, assure that:
 - 1. No facility to be utilized in the performance of the contract has been listed on the EPA List of Violating Facilities.
 - 2. It will notice the Consortium Staff Representative of the receipt of any communication from the Director, Office of Federal Activities, U.S. Environmental Protection Agency, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
 - 3. It will include substantially this assurance, including this third part, in every non-exempt subcontract.
- h. Will comply with the Executive Order 11246 (Equal Employment Opportunities), the Copeland Anti-Kick-Back Act, and the Davis-Bacon Act, whenever the Act's provisions apply to the contract.
- i. Will comply with all applicable provisions of the Americans with Disabilities Act.

29. Title to Property Acquired or Materials Developed

Title to all property furnished by the Consortium will remain with the Consortium unless or until such title is specifically relinquished in writing by the Consortium. Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost or materials developed will pass to and vest in the Consortium upon delivery of such property by the vendor or materials by the Contractor. Property and materials developed, the cost of which is reimbursable to the Contractor under this contract, will pass to and vest in the Consortium upon:

- a. Commencement of processing or use of such property and/or materials developed in the performance of the contract, or
- b. Reimbursement of the cost thereof by the Consortium in whole or in part, whichever first occurs.

Title to Property will not be affected by the incorporation or attachment thereof to any property and/or materials not owned by the Consortium or any part thereof, which becomes a fixture or loses its identity or personality by reason of affixation to any realty.

30. Ownership of Materials

The VCCS, the USDOL, and the Consortium will have unlimited rights to any data, materials, reports, studies, photographs, negatives, films, videos, or other documents first produced or delivered under this contract.

31. Order of Precedence

In the event there are inconsistencies or conflicts in the contract, unless otherwise provided therein, the inconsistencies shall be resolved by giving precedence in the following order:

- a. The Workforce Innovation and Opportunity Act,
- b. State Procurement Regulations,
- c. The regulations as approved by the Secretary of Labor,
- d. And these General Terms and Conditions.

32. Federal Rules and Regulations

This contract is under State Procurement Regulations and the Contractor agrees to abide by these and all present or future rules and regulations imposed upon the WIOA.

33. Contingency Clause

The Contractor agrees to comply with all present or future federal and/or state rules and regulations imposed upon the Issuing Activity. The Contractor further agrees that, as a result of any changes in the Workforce Innovation and Opportunity Act Grant, passage of replacement legislation, or other legislation causing a change to current legislation which affects this contract programmatically and/or monetarily, compliance on the Contractor's part is assured. The Contractor agrees to a mutual consent modification being issued to implement changes, if such changes are considered within the scope of original intent of this contract. If such changes are not within said scope, termination of this contract by act of law will be considered to have occurred, and settlement will be under General Terms and Conditions "Termination for Convenience." Furthermore, since all funding for this contract is contingent on the availability of federal funds by authorization and appropriation for activities contained in the contract, the Issuing Activity reserves the right to unilaterally amend or terminate the contract should the necessary funding authorizations and appropriations not be made or be changed after initially being enacted.

34. Internal Organization

The Contractor agrees that it will not, by act of commission or omission, do or fail to do any act that would hinder, frustrate or delay the performance of this contract or any act or duty required hereby.

35. Subletting and Assignment

The Contractor will not assign this contract or any part therein, unless otherwise provided or without the written consent of the Consortium Staff Representative, but in no case will such consent relieve the Contractor from the obligation under or change the terms of the contract. The Contractor will not transfer or assign any contract funds or claims due or to become due without the written approval of the Consortium Staff Representative having been obtained. The transfer or assignment of any contract funds, either in whole or in part, or any interest therein, which will be due or become due to the Contractor, will cause the annulment of said transfer or assignment so far as the Consortium is concerned.

36. Standard of Conduct

The Contractor hereby agrees that in administering this sub-grant, they will comply with the standards of conduct, hereinafter specified, for maintaining the integrity of the project and avoiding any conflict of interest in their administration.

a. General Assurance

Every reasonable course of action will be taken by the Contractor in order to maintain the integrity of this expenditure of public funds and to avoid any favoritism or questionable or improper conduct. This sub-grant will be administered in an impartial manner, free from personal, financial, or political gain. The Contractor, their executive staff and employees, in administering this sub-grant, will avoid situations, which give rise to a suggestion that any decision was influenced by prejudice, bias, special interest, or personal gain.

b. Conducting Business Involving Relatives

No relatives by blood, adoption, or marriage for any executive or employee of the Contractor will receive favorable treatment for enrollment into services provided by, or employment with, the Contractor. The Contractor will also avoid entering into any agreements for services with a relative by blood, adoption, or marriage. When it is in the public interest for the Contractor to conduct business (only for the purpose of services to be provided) with a relative, the Contractor will obtain approval from the Consortium Staff Representative before entering into an agreement. All correspondence will be kept on file and available for monitoring and audit reviews.

c. Conducting Business Involving Close Personal Friends and Associates

Executives and employees of the Contractor will be particularly aware of the varying degrees of influence that can be exerted by personal friends and associates and, in administering the sub-grant, will exercise due diligence to avoid situations which may give rise to an

assertion that favorable treatment is being granted to friends and associates. When it is in the public interest for the Contractor to conduct business with a friend or associate of an executive or employee of the Contractor, a permanent record of the transaction will be retained.

d. **Avoidance of Conflict of Economic Interest**

An executive, officer, agent, representative, or employee of the Contractor will not solicit or accept money or any other consideration from a third person or entity for the performance of an act reimbursed in whole or in part by the Contractor. Supplies, materials, equipment, or services purchased with sub-grant funds will be used solely for purposes allowed under the grant.

37. **Bonding**

A blanket fidelity bond must be secured for all officers, directors, agents, and employees of the Contractor/Subcontractor(s) with authority over and accessibility to WIOA funds. Coverage will be in the sum of \$100,000. Once contracts are awarded, the face value of the bond must be at least the total of all contracts awarded or \$100,000, whichever is greater.

38. **Coverage**

All entities/organizations funded, either partially or wholly using Workforce Innovation and Opportunity Act funds will be required to obtain, have in force and produce documentation of coverage necessary to cover any disallowed cost that may result from their activities under the Workforce Innovation and Opportunity Act. All entities must meet this requirement as a condition of receiving a contract with the Consortium and subsequent funding.

39. **Performance**

The Workforce Development Area Consortium may monitor and evaluate the Contractor's performance under the contract through analysis of required reports, expenditure statements, site visits, interviews with or surveys of relevant agencies/organizations and individuals having knowledge of the Contractor's services or operations, audit reports and other mechanisms deemed appropriate by the Workforce Development Area Consortium. The Program Operator is required to meet (80%-100%) or exceed (100%+) all negotiated performance standards contained in the approved contract. Should the Program Operator fail (less than 80%) to meet one (1) or more performance standards, technical assistance will be provided by Consortium Board staff, and the Program Operator will be required to develop and submit, for approval, a plan of action to meet or exceed the failed performance standards. Should the Program Operator fail to meet the negotiated performance standards for two (2) consecutive years or achieve less than 50% of any performance standard, including the first year of contract operation, the Consortium Board may elect to terminate the contract for non-performance. Performance under this contract may be a consideration in future contracts and negotiations.

40. **Service Levels**

The Workforce Development Area Consortium may monitor and evaluate the Contractor's service levels under the contract through analysis of required monthly reports, expenditure state-

ments, audit reports and other mechanisms deemed appropriate by the Workforce Development Area Consortium. The Program Operator is required to meet or exceed service level standards contained in the approved contract as previously defined in #38 above. Should the Program Operator fail to meet service level standards, technical assistance will be provided by Consortium Board staff, and the Program Operator will be required to develop and submit, for approval, a plan of action to meet or exceed the failed service levels. Should the Program Operator fail to meet the negotiated performance standards for two (2) consecutive years or achieve less than 50% of any service level standard, including the first year of contract operation, the Consortium Board may elect to terminate the contract for failure to attain Service Levels. Service Level attainment under this contract may be a consideration in future contracts and negotiations.

Service Levels that will be reviewed are: New Enrollments, Place Rate, Employed and received a credential, required training expenditure (Adult, DLW), required Work Experience expenditure (Youth), and the percentage of the contract expended.

41. Audit

The Contractor will have an independent audit performed annually. The Contractor will ensure that the auditor, immediately and in writing, notifies the Consortium of possible acts of fraud discovered during the performance of the audit. The Contractor will ensure the auditor issues the Workforce Development Area Consortium a copy of the audit report upon its completion. The Consortium, VCCS, and the Virginia Auditor of Public Accounts will determine the acceptability of the audit reports.

The Consortium will provide the VCCS with written documentation of the disposition of all questioned costs and administrative finds in the audit. The disposition must detail actions taken and include appropriate supporting documentation. A determination of allowability of questioned costs will not be deemed final until accepted by the USDOL Grant Officer.

42. Modification

No waiver or modification of the terms of the contract, including, without limitation, this provision, will be valid unless in writing and duly executed by the parties to be bound thereby.

43. 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, the Contractor(s) receiving funds pursuant to this contract will clearly identify:

- a. The percentage of the total costs of the program or project that will be financed with federal money.
- b. The dollar amount of federal funds for the project or program, and
- c. The percentage and dollar amount of the total cost of the project or program that will be financed by non-federal sources.

44. Disallowed Costs

The Consortium will give the VCCS timely notification of the possibility of disallowed costs incurred by its Contractors/Subcontractors. In appropriate cases, the VCCS will petition the USDOL for guidance. In the event that repayment is required, the Consortium will use prompt and efficient debt collection procedures to obtain cash repayment of disallowed costs. The Consortium will not forego debt collection procedures without the express written approval of the VCCS. Any required repayment will not be by or from federal funds.

45. Policies and Procedures

Program Operators are required to comply with all Federal, State and locally approved policies and procedures that are applicable to the execution of contractually approved deliverables. WDB approved policies and procedures are contained on the WDB's website and can be viewed at www.nrmrwib.org.

46. Participant Files/Records Transfer

Should a Program Operator cease operations or if another Program Operator is awarded a contract to provide service delivery in lieu of the former Operator, the following participant files/records storage and/or transfer provisions will apply.

- d. The current Program Operator is responsible for the completeness/accuracy of all participant files/records until such time as those records are turned over to the WDB. The Operator will be required to sign a statement, provided by the WDB, attesting to the completeness/accuracy of all participant files/records in their possession that will be transferred to the WDB. Even after transfer, the Program Operator retains responsibility and liability for all activities that occurred during the period functioning as a Program Operator for the WDB.
- e. The WDB will secure all participant files/records providing the Program Operator with an acceptance receipt. The WDB will be responsible for the security and storage of all files/records obtained from the Program Operator.
- f. In the event that a new Program Operator has been awarded a contract to deliver services previously performed by the former Program Operator, the new Operator assumes responsibility and liability for all actions occurring once they are in receipt of the files/records. The WDB will insure that original documents for all active participants are provided to the new Operator and copies of those documents are placed in the original file secured from the former Operator and retained in storage. The new Operator will sign an acceptance letter provided by the WDB, listing all files/records that have been provided to them by the WDB and accepting responsibility/liability for the maintenance of those files/records. For participants who have exited and are no longer receiving any services, including follow-up, all files/records for those participants will remain in storage. The former Program Operator will provide the following at time of transfer:
 1. A full client list.

2. A separate list differentiating active and inactive participants by name and State ID number.
 3. A chain of custody document signed by all parties including date of transfer, recipient entity and any transfer issues.
- g. All secured participant files/records will be retained by the WDB for a minimum of three (3) years following completion of the last clean audit. Financial records will be retained for a minimum of five (5) years. The WDB will pay all storage costs for all effected documents. The WDB will also be responsible for destruction of documents once the required retention period has expired. Should any issues arise concerning records transferred to the new Operator, the WDB will act as a mediator between both Operators to insure that a resolution to the issue is achieved in a timely manner.

47. Staff Time Documentation

Any staffing related reimbursement request submitted to the WDB must be supported by individual staff time and attendance records that record daily time worked in all applicable programs, functions and/or activities. The lack of staff time and attendance records or the inadequacy of those being maintained may be cause for the WDB to withhold payment of any effected invoices until such time as sufficient documentation is provided to the WDB.

48. Purchasing

Contractor agrees to purchase American made equipment and products in compliance with WIOA Sec. 502 and Secs. 8301-8303 of the Buy American Act.

49. Violation/Breach of Contract Terms (Contract over \$150,000)

In the event that the terms of this contract are violated or breached, the following remedies will apply:

- a) WDB Executive Director will meet with the Contractor representative to review and evaluate the specific violation/breach of contract terms;
- b) Technical assistance will be provided by Board staff to the Contractor in an effort to correct or resolve the violation/breach; and
- c) If the technical assistance doesn't resolve the violation/breach, the Board, at their sole discretion, reserves the right to administratively terminate the contract for cause and/or pursue legal remedies as appropriate to achieve a satisfactory resolution to the violation/breach.