

NEW YORK CITY BUSINESS SOLUTIONS CUSTOMIZED TRAINING AGREEMENT

BETWEEN THE

WORKFORCE DEVELOPMENT CORPORATION

AND

[1: INSERT EMPLOYER NAME], (“EMPLOYER”)

HAVING ITS PRINCIPAL OFFICE LOCATED AT

[2: INSERT EMPLOYER ADDRESS, CITY, NEW YORK ZIP CODE]

CONTRACT NO. 3: INSERT (Round #).[0 + number in alphabetical list]

This New York City Business Solutions Customized Training Agreement (“Agreement” or “Contract”) dated [4: Insert Contract Start Date], 2016 (“Effective Date”) is made by and between the Workforce Development Corporation (“WDC”), having its principal office located at 110 William Street, 8th Floor, New York, New York 10038 and Employer (collectively, the “Parties”). In the event of any conflict, ambiguity or inconsistency between this Agreement and any other document, the terms and conditions of this Agreement shall govern.

1. **Term.** The term of this Agreement shall be for a period not to exceed one (1) year, commencing on the Effective Date, unless this Agreement is earlier terminated in accordance with its terms (“Term”). WDC may cancel or terminate this Agreement, with reasonable cause, at any time, upon at least thirty (30) days advance written notice to the Employer.
2. **Scope of Program.** Employer shall administer a WDC-approved New York City Business Solutions Customized Training (“Training”) for eligible participants approved by the WDC using the “Trainee Eligibility” criteria set forth in Section 3 below (“Trainee” or “Trainees”). The Training conducted under this Agreement shall be provided by Employer, either directly or through a WDC-approved Trainer or Trainers (“Trainer” or “Trainers”) in accordance with the WDC-approved Training Plan (“Training Plan” or “Plan”), attached hereto and incorporated herein as Exhibit A as well as the Budget, attached hereto and incorporated herein as Exhibit B. No credit will be given for Training provided to individuals who have not been approved by the WDC or for training that is outside the scope of the approved Training Plan.
3. **Trainee Eligibility.** To be eligible to participate in the Training, each candidate must satisfy the following minimum eligibility requirements:
 - a. Candidate is at least 18 years of age at the time Employer submits its New York City Business Solutions Customized Training Application (“Application”) to the WDC;
 - b. Candidate will be employed by Employer in New York City upon commencement of the Training;
 - c. Candidate does not earn more than a pre-deduction wage of \$71,919/year (\$34.57/hour) prior to commencement of the Training;
 - d. Candidate has completed and submitted a Customer Information Form (“CIF”) to the WDC;
 - e. Candidate has submitted a copy of a government-issued photo ID, such as a driver’s license or passport, to the WDC; and
 - f. If Federal funding is used, Candidate meets all applicable federal selective service requirements, as applicable;
4. **Employer Assurances.** Employer shall attest to the following “Employer Assurances” pertaining to its participation in and administration of the Training:
 - a. Employer’s business has been operating for at least one (1) year prior to date it submits its Application to the WDC;
 - b. Employer will provide full time employment (at least 30 hours/week) and W-2’s for each Trainee upon completion of the Training;

- c. No currently employed workers of Employer will be displaced by any Trainee, including a partial displacement such as a reduction in the hours, wages, or employment benefits as a result of this Training;
- d. The Training contemplated by this Agreement does not infringe in any way upon the promotional opportunities of current employees not involved in the Training; and
- e. No funds paid to the Employer by the WDC pursuant to this Agreement shall be used to assist, promote or deter union organizing.

5. **Additional Terms and Conditions of the Program.** Employer shall comply with the following additional terms and conditions of the Training during the Term of this Agreement:

- a. Employer shall provide all necessary training, supervision, equipment and materials for the Training;
- b. Employer shall promptly notify WDC of any change in a Trainee's employment status or terms of employment including, but not limited to, termination or withdrawal from employment;
- c. Employer is prohibited from making any material modifications to the Training or this Agreement without the prior written consent of WDC;
- d. Unless funding is approved by the WDC to provide training to the Employer itself, Employer is prohibited from requesting funds to reimburse its own wages;
- e. Employer may request to replace a Trainee with another eligible employee in a Training that is already under way. Such requests will be reviewed and approved by the WDC on a case-by-case basis based on relevant considerations.
- f. Employer shall compensate each Trainee at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by Employer and who have similar training, experience and skills. Each Trainee's wage rate shall meet or exceed the minimum rate established by any and all applicable law, including, without limitation, Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable Federal, New York State and New York City prevailing wage and minimum wage laws;
- g. Employer shall provide benefits and working conditions to each Trainee at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work;
- h. Employer shall apply the same health and safety standards established under federal and state law to Trainees that are applicable to the working conditions of other trainees or employees;
- i. Employer shall apply all registration requirements pertaining to the New York State Department of Labor's worker's compensation and disability benefits to the Program and each Trainee;
- j. Employer shall provide Trainees with workers' compensation on the same basis as the compensation of its other employees;
- k. No member of any Trainee's immediate family will directly supervise the Trainee nor will the Trainee supervise an immediate family member. For the purpose of this Contract, "immediate family" is defined as spouse, children, parents, grandparents, grandchildren, brothers, sisters or persons bearing the same relationship to the Trainee's spouse;
- l. Employer may apply to WDC to withdraw from all or any part of the Training by providing 30 days written notice To the WDC. Failure to complete all outstanding obligations prior to effective date of withdrawal shall be considered sufficient grounds to withhold payment;
- m. Employer shall be prohibited from terminating a Trainee from the Program for poor performance without providing prior written notice to the Trainee and the WDC and without providing a reasonable opportunity for the Trainee to improve performance through corrective action(s);
- n. Employer shall fully cooperate with the WDC and any authorized WDC designee to perform certain case management, reporting, monitoring, compliance, and other related Training functions for the purposes of determining compliance with the terms of this Agreement, including eligibility requirements, administrative obligations and other requirements and responsibilities. This cooperation includes making Trainee information available to the WDC and/or the authorized WDC designee upon reasonable notice and in a reasonable manner;
- o. Employer shall submit to the WDC for prior written approval any and all Trainers, subcontractors and/or consultants identified by Employer to perform work pursuant to this Agreement and the Training.

Additionally, Employer shall be fully responsible for any approved Trainer, subcontractor and/or consultant performing work pursuant to this Agreement and the Training; and

- p. Employer agrees to provide the WDC with key outcomes data including, but not limited to, Training hours completed, wage information, and employee retention statistics for each Trainee as well as the Training as a whole. The WDC reserves the right to withhold final (i.e. close-out) payment until receipt of said data.
- q. A specified activity shall not impair an existing contract for services or collective bargaining agreement, and no such activity that would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization and employer concerned.

6. **Maximum Reimbursable Amount.** WDC shall reimburse Employer for “Eligible Training Costs” (as that term is defined in Section 7(a) below) in an aggregate amount not to exceed **[\$5: Insert award amount]** (“Maximum Reimbursable Amount”) in accordance with the Budget (**Exhibit B**). This amount is determined by calculating the total Eligible Training Costs, subtracting the Employer Contribution, and adding an Administrative Payment of up to 10% of the Eligible Training Costs. Said reimbursement is subject to terms and conditions set forth below and no liability shall be incurred by the WDC beyond the amount of such monies without a written Contract amendment executed by both parties.

- a. **Cost Reimbursement.** During the Term, the WDC shall reimburse the Employer for its Eligible Training Costs in an amount not to exceed eighty percent (80%) of the Maximum Reimbursable Amount
- b. **Close-Out Payment.** Six (6) months following Training completion, 20% of the Maximum Reimbursable Amount is available to Employer as a “Close-out” payment. The Close-out Payment shall be calculated as follows:

$$\frac{(\text{Percentage of Trainees who received a wage increase}) \times (\text{Close-out Payment})}{(\text{Percentage of Trainees projected to receive a wage increase})}$$

7. **Requests for Reimbursement.**

- a. “Requests for Reimbursement” shall be submitted once every quarter (90 days) of the Term if training has occurred during that period; failure to timely submit quarterly reimbursement requests may result in the delay in processing and/or denial of payment. Reimbursement requests shall include the Consortium Administrator’s name, date, and a description of the Agreement (e.g., Contract No.) and shall be accompanied by appropriate supporting documentation of actual expenditures incurred during the applicable period. All Eligible Costs must have been incurred on or after **[6: Insert contract start date]**, the contract start date indicated on the cover page of the Agreement. Such requests shall include appropriate supporting documentation, including but not limited to:
 - i. Individual Sign-in Sheets for each instance of training signed by each Trainee and the Trainer attesting to the number of hours of training received by each Trainee;
 - ii. Employer Payroll Records for Trainees before training starts;
 - iii. Employer Payroll Records for Trainees employed during the time of training;
 - iv. Trainer/subcontractor/consultant invoices submitted to the Employer documenting each training course. This shall include, but is not limited to the Trainer name, the Employer name, the name of the training course, and the cost for the training as a separate line item; and
 - v. Proof of payment for each invoice may include, but is not limited to, a general ledger, cancelled check, wire transfer documentation, or a credit/debit card statement with line items matching each claimed expenditure in the corresponding invoice submission.
- b. Once six (6) months following the expiration of the Contract Term have elapsed, Employer shall have 90 days to submit its final Request for Reimbursement, which reflects achievement of wage increase goals. Failure to timely submit the final Request for Reimbursement may result in the delay in processing and/or denial of payment. Such request shall include key outcomes documentation, including but not limited to:
 - i. Employer Payroll Records for trainees employed 6 months after training has been completed, training hours completed, and trainee retention statistics. The WDC reserves the right to withhold the close-out payment until receipt of said data.

- c. Upon receipt and approval of a Request for Reimbursement, including all appropriate supporting documentation, WDC shall remit to the Employer a payment of its approved charges in accordance with applicable provisions of this Agreement. WDC reserves the right to request any additional documentation it deems necessary to validate claimed expenditures.
 - d. “Eligible Training Costs”
 - i. Eligible Training Costs for the Program shall include the following types of costs actually and reasonably incurred by the Employer in the administration of the Program:
 - 1. Tuition and other course fees of outside providers;
 - 2. Wages for the internal instructor or Trainer for the hours spent in training;
 - 3. Training-related material, including related production costs (i.e., books, manuals, handouts, etc.);
 - 4. Training facility (if applicable); and
 - 5. Trainee wages for the hours spent in Customized Training.
 - ii. Eligible Training costs for the portion of the Program that is “On-The-Job” training, shall include the following type of cost actually and reasonable incurred by the Employer in the administration of the Program:
 - 1. Trainee wages for the hours spent in on-the-job training during the shift/hours for which the employer was hired.
 - iii. Eligible Training Costs do not include the following:
 - 1. Fringe Benefits;
 - 2. Costs to purchase equipment;
 - 3. Costs to renovate any facilities;
 - 4. Costs to purchase uniforms;
 - 5. Purchase of tools to facilitate tracking of outcomes;
 - 6. Travel Expenses;
 - 7. Costs related to hiring temporary workers to perform the duties of employees being trained.
 - e. The WDC may disallow for payment any expenses or charges which were not authorized or documented in accordance with the terms of this Agreement, or for failure to deliver any required training or service to the satisfaction of the WDC.
 - f. The WDC reserves the right to discontinue, modify or withhold any payments to be made under this Agreement or to require a total or partial refund of any Agreement funds, if it, in WDC’s sole discretion, such action is necessary: (i) because the Employer has not fully complied with the material terms and conditions of this Agreement; (ii) to protect the purpose and objectives of the Program or other activities of WDC; to (iii) comply with any law or regulations applicable to the Employer, WDC or this Agreement; or (iv) because of any representation or warranty made in writing to WDC in connection with the making of the Agreement, or any application, certificate, document, statement or report made in compliance with the Agreement, is determined to have been false or misleading in any material respect when made, regardless of any intent to defraud.
 - g. Employer may not seek reimbursement for payments to any Trainee for paid holiday, vacation or sick pay and/or lunch hours.
 - h.
8. **Agreement Monitoring.** During the Term, the WDC may engage in various monitoring activities to ensure Employer’s compliance with the Agreement, verify that each Trainee is receiving the agreed-upon type and amount of training and that neither the Employer nor any Trainee is engaged in “prohibited activities” (as that term is described below in Section 9). WDC may conduct site visits and/or inspect and monitor any Employer records (e.g., payroll, tax and insurance certificates, attendance logs/sign-in sheets) or activities pertaining to the Agreement at any time during normal business hours, and as often as deemed necessary during the Term. Employer shall promptly provide such additional information, reports and documents as WDC may request and shall allow WDC and its representatives to have reasonable access during regular business hours to files, records,

accounts or personnel that are associated with this Agreement, for the purposes of making such financial reviews, verifications or Agreement evaluations as may be deemed necessary by WDC.

9. **Prohibited Activities.** Employer's provision of training under this Agreement shall not include any partisan political activity or any activity to further the election or defeat of any candidate for public, political, or party office, nor shall any of the funds provided under this Agreement be used for such purposes. There shall be no religious worship, instruction or proselytizing as part of or in connection with the Employer's provision of training under this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.
10. **Use of Name.** Employer shall not use, or permit the use of, the name, trade name, service marks, trademarks, trade dress, or logo of WDC in any form of publicity, press release, advertisement, or otherwise without WDC's prior written consent. As a condition to entering into this Agreement, Employer shall permit the WDC to use the Employer's name as well as certain information pertaining to this Agreement (i.e., type of training, value of the award and financial contribution toward the training), in any form of publicity, press release, advertisement or otherwise.
11. **Audit.** All receipts, management and disbursement of funds provided by the WDC pursuant to this Agreement, and the books, records and accounts evidencing such receipts, management and disbursements, are subject to audit by the WDC and appropriate government entities, if applicable.
12. **Retention of Records.** Employer shall maintain for six (6) years, after the final payment or termination of this Agreement, whichever is later, copies of all financial and work reports, evaluation surveys and audits which reflect the training rendered hereunder and fiscal accountability of all monies appropriated and spent thereby, make copies thereof available and submit such copies to the WDC upon request. Any books, records and other documents that are created in an electronic format in the regular course of business may be retained in an electronic format.
13. **Assignment and Subcontracting.** Neither this Agreement nor any interest herein may be assigned, delegated, or otherwise transferred by the Employer without the prior written consent of WDC. Employer may not subcontract any of the Agreement without the prior written consent of WDC, which WDC may withhold in its sole discretion. All eligible costs due to any Subcontractor/Consultant are to be paid by the Employer and shall be subject to the provisions of this Agreement. This Agreement may be assigned, in whole or in part, by WDC to any corporation, agency or instrumentality having authority to accept such assignment. WDC shall provide the Employer with written notice of any such assignment.
14. **Independent Contractor Status; Employees of Employer.** Employer and the WDC agree that the Employer is an independent contractor, and not an employee of the WDC. In addition, all Trainers, subcontractors, consultants, employees or Trainees of the Employer who are employed by the Employer to perform work under this Agreement are neither employees of the WDC nor under contract to the WDC and the Employer alone is responsible for their work, direction, compensation and personal conduct while engaged under this Agreement.
15. **Indemnification.** To the fullest extent permitted by law, the Employer shall defend, hold harmless and indemnify the WDC, the City, the New York City Economic Development Corporation (NYCEDC) and their respective employees, officers, and directors from liability upon any and all claims of any kind on account of injuries or death to any person or damages to property on account of any negligence, intentional tort, or failure to comply with the terms of this Agreement by the Employer, its officers, trustees, employees, trainees, agents, servants, Trainers, subcontractors, consultants or independent contractors.
16. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. The Employer hereby irrevocably agrees to bring any action against the WDC, the City and NYCEDC only in the state and federal courts located in New York County and hereby irrevocably consents to the jurisdiction of the state and federal courts located in New York County in connection with any action brought by

the WDC, the City or NYCEDC or in which the WDC, the City or NYCEDC is or becomes a party to enforce any of its rights and remedies under this Agreement.

17. **Compliance with Law.** The Employer shall render all services under this Agreement in accordance with the applicable provisions of Federal, State and local laws, rules and regulations as are in effect at the time such services are rendered.
18. **Non-Discrimination.** Employer agrees not to engage in any unlawful discriminatory practice as defined and pursuant to the terms of Title VIII of the New York City Administrative Code.
19. **Trainee Grievances.** Employer warrants and represents that it shall comply with, and shall require each Subcontractor/Consultant to comply with the Trainee grievance notification procedures set forth in the Workforce Innovation and Opportunity Act of 2014 (Pub. Law 113-128) ("WIOA"), as amended. The WDC shall provide such information to the Employer.
20. **Merger.** This written Agreement contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.
21. **Arbitration.** Any dispute or claim arising out of or relating to this Agreement shall be resolved solely by arbitration conducted in accordance with the CPLR Rules for Non-Administered Arbitration in New York, before a panel of three arbitrators to be selected in accordance with the screened selection process set forth in the CPLR Rules. No potential arbitrator may be appointed unless he or she has confirmed in writing that he or she is not, and will not become during the term of the arbitration, an employee, partner, executive officer, director, or substantial equity owner of any WDC agencies.
22. **Notices.** All notices and requests made hereunder by either party shall be in writing and directed to the address of the parties as set forth below:
 - a. To WDC: 110 William Street, 8th Floor, New York, New York 10038;
Attn: Kelly Dougherty, Executive Director
 - b. To Employer: [7: Insert employer address]
Attn: [8: Insert name, title of authorized representative]
23. **Binding Effect.** Except as may be agreed in writing by the parties, this Agreement shall not be binding upon WDC unless signed by an authorized person as have been designated in writing by WDC ("WDC Representative"). Any alterations, modifications or additions made to this Agreement will be deemed void, and of no effect, unless expressly accepted in writing, signed by an authorized WDC Representative.
24. **Insurance.** During the term of this Agreement, Employer, at its sole cost and expense, shall maintain the insurance set forth below, as applicable. Subsection (b) only applies if the Employer has salaried employees.
 - a. **Commercial General Liability Insurance.** Employer shall maintain Commercial General Liability Insurance covering the Employer as Named Insured and the WDC, NYCEDC and the City as an Additional Insured in the amount of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate. Such insurance shall protect the WDC, NYCEDC, the City, and the Employer from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Agreement and shall be in a form acceptable to the WDC. Coverage should be at least as broad as the most recently issued ISO Form CG 20 10.
 - b. **Workers' Compensation, Disability Benefits and Employer's Liability Insurance.** Employer shall maintain in a form acceptable to the WDC, and ensure that each approved Trainer, subcontractor or consultant maintains, Workers' Compensation Insurance, Disability Benefits Insurance and Employer's Liability Insurance in accordance with the Laws of the State of New York on behalf of, or with regard to, all employees and Trainees providing or receiving services and/or training under this Agreement.

Proof of Worker's Compensation, Employer's Liability Insurance and Disability Benefits shall provide one of the following:

1. C-105.2 Certificate of Workers' Compensation Insurance;
2. U-26.3 State Insurance Fund Certificate;
3. Request for WC/DB Exemption Form (Form CE-200); or
4. Any successor forms or other proof of insurance acceptable to the WDC

c. Business Automobile Liability Insurance. If vehicles are used in connection with this Agreement, then the Employer shall maintain Business Automobile Liability insurance of at least One Million Dollars (\$1,000,000) each accident combined single-limit for liability arising out of ownership, maintenance, or use of any owned, non-owned, or hired vehicles, to be used in connection with this Agreement. Coverage should be at least as broad as the most recently issued ISO Form CA0001.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

WORKFORCE DEVELOPMENT
CORPORATION

[9: INSERT EMPLOYER NAME],

By: _____

By: _____

Signature

Signature

Name: Kelly Dougherty

Name: [10: Insert name of authorized representative]

Title: Executive Director

Title: [11: Insert title of authorized representative]

Date: _____

Federal Employer ID No.: [12: Insert EIN]

Date: _____

ACKNOWLEDGMENTS

State of New York)
) SS.:
County of New York)

On this ____ day of _____, 201__, before me personally came Kelly Dougherty, to me known, and known to me to be the Executive Director of the Workforce Development Corporation, who executed the foregoing agreement and who acknowledged to me the execution thereof for the purposes therein mentioned.

Notary Public

State of)
) SS.:
County of)

On this ____ day of _____, 201__, before me personally came _____,
to me known, and known to me to be the _____ of **[13: INSERT EMPLOYER
NAME]** _____, who executed the foregoing agreement and who acknowledged to me the execution thereof for the purposes therein mentioned.

Notary Public

EXHIBIT A
TRAINING PLAN

[14: COPY/PASTE TRAINEE AND AGREEMENT TABS FROM CUSTOMIZED TRAINING APPLICATION]

EXHIBIT B
PROGRAM BUDGET

[15: INSERT COSTS IN COURSE TAB FROM CUSTOMIZED TRAINING APPLICATION]

Budget	
Budget Item	Cost
External Training	\$0.00
Internal Training	\$0.00
Books/Training Materials	\$0.00
External Training Space	\$0.00
Curriculum Development	\$0.00
Customized Trainee Wages	\$0.00
Total Training Cost	\$0.00
Administrative Payment	\$0.00
Employer Contribution	\$0.00
Maximum Reimbursable Amount	\$0.00

EXHIBIT C INSURANCE DOCUMENTATION

Example Certificate of Insurance COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY		05/11/07	05/11/08	EACH OCCURRENCE
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				\$1,000,000
		<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				DAMAGE TO RENTED PREMISES (Ea occurrence)
						\$1,000,000
						MED EXP (Any one person)
						\$10,000
						PERSONAL & ADV INJURY
						\$1,000,000
						GENERAL AGGREGATE
						\$2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:	PRODUCTS - COM/PROP AGG	\$2,000,000			
	POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	\$
	<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
	<input type="checkbox"/> HIRED AUTOS					
	<input type="checkbox"/> NON-OWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC	\$
					AUTO ONLY: AGG	\$
	EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE	\$
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$
	<input type="checkbox"/> DEDUCTIBLE					\$
	RETENTION \$					\$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		01/28/07	01/28/08	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTHER
		E.L. EACH ACCIDENT				\$1,000,000
		E.L. DISEASE - EA EMPLOYEE				\$1,000,000
		E.L. DISEASE - POLICY LIMIT				\$1,000,000
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?					
	If yes, describe under SPECIAL PROVISIONS below					
	OTHER					
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS						
ECONOMIC DEVELOPMENT CORPORATION (EDC), WORKFORCE DEVELOPMENT CORPORATION AND THE DEPARTMENT OF SMALL BUSINESS SERVICES ARE INCLUDED AS ADDITIONAL INSURED (EXCEPT WORKERS COMPENSATION) WHERE REQUIRED BY WRITTEN CONTRACT AND ALLOWED BY LAW.						
CERTIFICATE HOLDER						
CANCELLATION						
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.						

Per Occurrence minimum:

General Aggregate minimum: \$2MM

Dates must be valid for contract period

Dates must be valid for contract period

Proof of WC statutory limits

Employer's Liability Limit Minimum: \$1MM

WDC named Certificate

Additional Insureds required

EXHIBIT D
PROGRAM GUIDELINES

NYC Business Solutions Customized Training Program Guidelines



Updated September 2014

Training Can Impact Your Bottom Line!

*Increasing Productivity • Reducing Turnover • Better Customer Retention
Gaining a Competitive Edge • Increasing Efficiency • Acquiring New Customers
Expanding Managerial Capacity*

I. Before You Apply:

1. The Basics	2
2. Types of Training	2
3. Who is Eligible	3
4. Eligible Costs	3
5. Ineligible Costs	4
6. Funding and Breakdown of Award	4

II. Applying:

1. Part 1: Eligibility Questionnaire	5
2. Part 2: Customized Training Application	5
3. Evaluation	5
4. Important Information on Applying	5
5. Award Notification	6
6. Re-Application	6
7. Training Timeline	6
8. Training Providers and Search Assistance	6

III. Grant Awarded:

1. Account Managers	7
2. Kick-Off Meeting	7
3. Contracting	7
4. Working Session	7
5. Modifications to a Training Project	8
6. Getting the Money and Monitoring	8
7. Calculating the Reimbursement	9
8. Finishing Up the Project	9

IV. Examples of Past Awards and Helpful Links 10

NOTE: Administrators of the NYC Business Solutions Customized Training Program reserve the right to amend or deviate from these Program Guidelines at any time, without advance notice.

I. Before You Apply

What is Customized Training: NYC Business Solutions Customized Training is a competitive program that provides funding to enable New York City business owners to invest in their workforce.

What's in it for you: With financial support, business applicants can afford training programs that can impact a business's bottom line; for example, by reducing turnover, becoming more efficient or productive, or by increasing and retaining customers.

What's in it for us: As your employees gain new skills and become more valuable, they are compensated with wage increases. This creates a more highly skilled workforce with a better quality of life.

The Basics:

- A. The award schedule can be found on our website: www.nyc.gov/training.
 - 1. The maximum award is **\$400,000**
 - 2. The minimum award is **\$10,000**
- B. Customized Training awards are paid out on a *reimbursement-basis* and cover a portion of the costs of a training program.
 - 1. **80%** of the award is provided in quarterly reimbursements throughout the duration of the training project
 - 2. **20%** of the award is held until project close-out (see page 9 for more information)
- C. Customized Training awards **can only** be used to support one of the following categories of business needs:

Training on recently purchased equipment or software

Training to offer new services/products to reach new markets

Training to promote or give current staff new skills to advance into hard to fill positions

Training to update obsolete skills that are necessary in order for the business to be competitive

- D. Customized Training **cannot** be used for the following:
 - 1. Training that is mandated by the government and considered the responsibility of the business owner (such as sexual harassment training, diversity training, and mandated safety training).
 - 2. Ongoing training that is already being provided by the business owner.
 - 3. Training that does not provide transferable or advancement of skills (such as new employee orientation).

Types of Training: Training may include either:

Customized: Training that is comprised of activities that occur outside of an employee's regular job description.

Examples: Classroom or online training with an external consultant, instructor or internal staff person.




On-the-Job: Training provided to an employee who is engaged in productive work (not in a classroom). On-the-Job training applications **MUST** also include **Customized Training**.

Example: Shadowing a manager to further develop a new skill.

** Applicants may combine several types of training into a single application. Training programs do not need to begin and end on the same dates.*

Training can provide employees with either:



<u>Occupational Skills</u> (skills related to a specific occupation)	<u>Work-Readiness Skills</u> (examples)
Operating a new piece of equipment or software system	English as a Second Language
Developing a new product or service	Microsoft Office
Managing projects or staff in a higher level position	Customer Service

Who is Eligible?

Business Applicants Must:	Employees Must:
Be a for-profit business or two jointly applying for-profit businesses that have a similar training need	Be either a new employee or an existing employee; not the business owner
Be located in one of New York City's five boroughs (i.e., Bronx, Brooklyn, Manhattan, Queens and/or Staten Island)	Be performing work in one of New York City's five boroughs
Demonstrate the ability to pay for training upfront	Be over 18 years old
Project wage increases for all currently employed trainees	Be paid during training (pay must meet Federal and State minimum wage standards)
Propose to train at least 10 employees (with no more than 50% as new hires)	Not earn more than a pre-deduction wage of \$71,919/year (\$34.57/hour)
	Meet all applicable Federal Selective Service requirements

Eligible Customized Training Costs:

External Instruction	→ The cost of tuition or the salary of an external training provider.
Internal Instruction	→ Wages paid to internal staff that provides training to trainees as part of the Customized Training project.
Curriculum Development	→ Time spent customizing curriculum to address the specific training need.
External Space	→ Space that is rented specifically for training.
Trainee Wages	→ Wages for hours spent in training (tips, bonuses, and commission are not eligible for reimbursement).
Books, Materials, And Supplies	→ Materials that are specifically training related and cannot be used for items that will produce goods or services for sale or items used during normal business operations.

Eligible On-the-Job Training costs:

The only eligible costs are **trainee wages** for hours spent in training (tips, bonuses, and commission are not eligible for reimbursement).

Ineligible Training Costs:

The following is a non-exhaustive list of costs that are ineligible for reimbursement and will not be calculated as part of the employer's contribution:

- A. Business owners may not request compensation for conducting training.
- B. Fringe benefits: Only an employee's base salary can be factored into the cost of training.
- C. Equipment, including leased equipment such as copiers or laptop computers.
- D. Travel expenses.
- E. Renovation of facilities.
- F. Uniforms.
- G. Certification fees are not eligible unless such fees are included in the instruction fee.
- H. Costs related to hiring a temporary worker to perform the duties of an employee being trained. The wages of the temporary worker will not be covered. Only the wages of the employee being trained can be factored into the cost of the project.
- I. Any On-the-Job training cost outside of trainee wages.
- J. Purchase of tools that will facilitate the tracking of outcomes. It is the employer's responsibility to track outcomes and produce documentation to verify that the outcomes have been met.
- K. Training funds cannot be used for items that produce goods or services for sale.

Calculating the Award:

The following table outlines the maximum award amount business can receive:

Business Size:		Award is:		
		Base Customized Training Award		Administrative Payment ²
Business with ≥ 125 employees	=	Up to 50% of total cost	+	Additional 10% of total training cost
Business with <125 employees	=	Up to 60% of total cost	+	Additional 10% of total training cost

Employer Contribution¹:

Business applicants must contribute **at least** 30%- 40% of program costs, based upon the chart above.

Administrative Payment²:

An additional payment provided in acknowledgement of the time and resources it takes to manage the training program.

For Joint Applicants:

Award will be determined based on the average size of the businesses. If the two businesses have a total of 125 employees or more, Customized Training will cover up to 50% of the total cost. If the majority of businesses have fewer than 125 employees, Customized Training will cover up to 60% of the total cost.

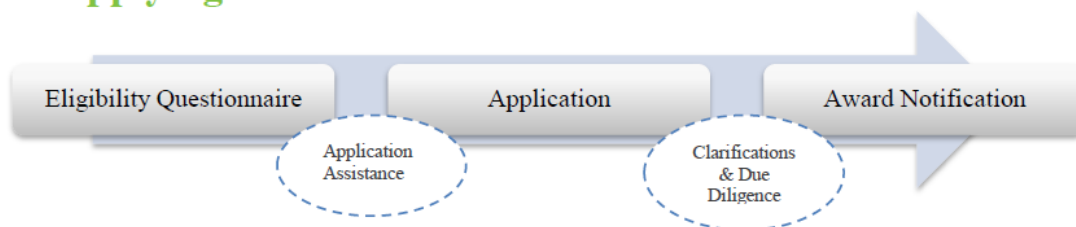
Each joint applicant must contribute to the training program.

The employer contribution cannot come from an organization applying on behalf of joint applicants. At the employer's discretion, third-party organizers may receive some or all of the administrative payment given to Customized Training recipients.

¹ According to the New York State Workforce Development System Technical Advisories # 10-19, # 10-19.1, and #14-5; USDOL permits a waiver of the requirement of the 50% employer match for Customized Training and permits a graduated scale match. If this waiver is applicable, having been extended if necessary and not revoked, at the time of the award or in the contracted period, the Customized Training team reserves the right to decrease the employer match in accordance with the waiver terms.

² The Administrative Payment is subject to funding availability.

II. Applying



Part 1 - Eligibility Questionnaire:

The questionnaire must be filled out online at www.nyc.gov/training.

- Business applicants are notified of their eligibility status immediately upon submission of Part 1 of the application.
- Customized Training program staff will reach out to discuss eligibility, answer questions and provide information.

Part 2 – Customized Training Application:

The application will be emailed to eligible applicants.

- Business applicants are encouraged to participate in an **application assistance session** with a program staff member
- Applications may be submitted via email, mail or in person. Only complete applications will be considered.
- Upon submission of the application, Customized Training program staff will conduct due diligence and clarifications before evaluation.

Among other things, applications are evaluated on:

- ✓ Need for funding and need for training
- ✓ Feasibility of program
- ✓ Training launch date
- ✓ Trainee wage gains
- ✓ The percentage of low-income trainees
- ✓ New or upgraded skills for trainees
- ✓ Budget and cost/benefit of proposal
- ✓ Potential impact on economic activity in New York City



Important Information on Applying:

- No preference is given for training special populations (i.e. minority groups, people with disabilities, etc.).
 - However, employers who propose wage gains for low-income workers (those who currently make \$15/hr or less) will receive favorable consideration.
- The Chief Executive Officer/Owner of the business and all training provider(s) must be willing, upon request, to meet with Customized Training staff and provide additional details regarding the training proposed or past experience administering similar training. Training providers may be required to provide references.



Award Notification:

Business applicants who submit an application to the Customized Training program will be notified individually of their award status by letter and/or email within two weeks of the scheduled evaluation.

Evaluators may award funding on the condition that one or more components of training be altered and/or eliminated from the proposal.

Common reasons for rejection include: Incomplete application, application does not meet eligibility requirements, clear outcomes are not indicated, project scope is not timely or feasible, etc.

Re-Application:

- A. There is no limit to the number of times a business can apply for a Customized Training award.
 - If a previous application was unsuccessful and the business applicant did not receive funding, a discussion with Customized Training staff **is required** before reapplication to determine the reasons for rejection and which pieces of the application can be resubmitted.
- B. If a previous application resulted in a Customized Training award, the funded project must be complete and closed-out before reapplication. The new proposal must either significantly expand on the original project or address a new training need.

Training Timeline:



Training Providers and Search Assistance:

Business applicants may use the [Training Provider Directory](#) for assistance with a training provider search. Specific Training Providers must be listed in the application. *The Customized Training Program will not accept applications with "TBD" or "{business name} staff" listed as the training provider.*

Search by course or school

Select Industry

Select Job Title

Find Courses by

☒ by borough OR ☐ Zip Codes

Zip Code 1 Zip Code 2 Zip Code 3

* Please note that the Training Provider Directory is just one source among many and that training providers do not have to be in the Training Provider Directory to deliver Customized Training.

* If a training provider offers certified instruction, it should be licensed through the NY State Department of Education, the Board of Proprietary Schools, or another industry oversight organization. This is the responsibility of the applicant to ensure.

III. Grant Awarded

Congratulations! Now What?

Account Manager:



Each awarded business will be assigned an Account Manager as its primary contact person to assist them for the duration of their time in the Customized Training program. This person will work with the business to review the scope and budget of their project, execute a final contract, conduct site visits, monitor training progress, and evaluate final outcomes after project completion.



Kick-Off Meeting:

Awarded businesses will meet a Customized Training Account Manager for a Kick-Off meeting within the first few weeks of award notification. The purpose of this meeting is to meet the Account Manager assigned to the project, review the process of working with SBS over the duration of training and go over documentation required for contracting, receiving reimbursements and closing-out a project.

Working Session:

The Working Session is a meeting at the business location designed for the Account Manager to review and collect pre-contract documentation, answer questions and provide additional technical assistance. The Account Manager may also review the draft contract and work with the awarded business to select an appropriate contract start date.

Contracting for the Customized Training Program:

Awarded businesses must sign and execute a contract with the Workforce Development Corporation to receive any funding. The Account Manager will collect the following documents before a contract is executed:

1. An original Certificate of Insurance before the contract is executed.
2. Customer Information Forms (CIFs) – these are the official trainee registration forms
3. Pre-training payroll for all trainees



Important Information on Contracting:

- A. Awarded businesses unable to launch training and execute a contract within 3 months of the award date risk withdrawal of their award.

If an award is equal to or greater than \$100,000, the business must file a Vendor Questionnaire with the City's Vendor Information Exchange System (VENDEX)¹. More information is available at www.nyc.gov/vendex.

- B. Awarded businesses will only be reimbursed for expenses incurred during the contracted period.

¹ Or, if the award plus the employer's other contracts with the City in the last 12 months equals or exceeds \$100,000

Contract Modification:

Awarded businesses have up to **90 days** after the final contract execution date to propose modifications to the original awarded application.

Modifications proposed after 90 days may result in unconditional rescission of award.

Modifications to the project scope **must** be approved by a Customized Training staff member.

- The Customized Training program administrators reserve the right to approve or deny these requests based on review of modified application materials submitted by the business.

Reminder!

Awarded businesses are expected to keep Customized Training staff apprised of *any possible divergences* from the original approved scope.

<i>Number of</i>	<i>Cost</i>
<i>trainees</i>	<i>Training</i>
<i>Training</i>	<i>hours</i>
<i>providers</i>	<i>Wage gains</i>

Getting the Money and Monitoring:

Each Customized Training project will be monitored in three ways throughout the duration of the contracted term: **site visits**, **training interviews** and collection of **reimbursement documentation**.

Site Visits – Account Managers will conduct one or more site visits to evaluate training throughout the duration of the Customized Training project.

Interviews – Account Managers may perform progress interviews, conducted by phone or email, throughout the duration of the project.

Reimbursement Documentation – Reimbursement documentation, demonstrating approved training related expenses incurred may be submitted by the awarded business on a quarterly basis.

The **chart below** outlines the types of costs and allowable forms of backup documentation:

Expenditure	Supporting Documentation (business must provide all supporting documentation listed for each expenditure)
External Instruction	1. Cancelled checks <i>or</i> general ledger report 2. Invoice from training provider detailing training
Internal Instruction or Internal Curriculum Development	1. Payroll <i>or</i> general ledger report 2. If applicable, an invoice (invoice should include: name, hours and dates of training or curriculum development, hourly wage and total cost)
Tuition/Fees	1. Cancelled checks <i>or</i> general ledger report 2. Invoice from training provider detailing training
Books or other training materials	1. Receipts, cancelled checks, <i>or</i> general ledger report 2. Invoice, if applicable
Trainee Wages	1. Payroll report 2. Copies of sign-in sheets* .
External Training Space	1. Invoice 2. Cancelled check <i>or</i> general ledger report

* Every awarded business must keep trainee activity logs, or sign-in sheets, for each instance of training. The business is required to keep these logs on file and available for audit for at least six years after training completion.



Important Information on Reimbursements:

- A. The total amount reimbursed is capped at the contracted award amount.
- B. Reimbursements are only made on eligible and documented costs incurred.
- C. Reimbursements take approximately 4-8 weeks to process. If any documentation is missing or unclear, your reimbursement may be delayed or withheld.

Calculating the Reimbursement:

$(\text{Quarterly Training Costs Incurred} - \text{Employer Contribution}) \times (80\%) = \text{Quarterly reimbursement total}$

If applicable, a 10% Administrative Payment will be factored into the reimbursement

Employer Contribution



Employers must contribute approximately 30%- 40% of program costs.

Administrative Payment



An additional payment provided in acknowledgement of the time and resources it takes to manage the training program.

Close-out Payment



The 20% that is withheld from each quarterly reimbursement for outcomes (see Close-out section below).

Finishing Up the Project:

Project Close-out happens **six months** after the final day of training. Post-training payroll will be collected to determine the number of trainees who received a wage increase. As a reminder, wage gains are projected for all incumbent trainees and must be directly tied to the training program.



Close-out Payment

The Close-out Payment will be paid to the business in full *if* the business provides 100% of incumbent trainees with a wage increase 6-months post training.

- If less than 100% of incumbent trainees receive a wage increase, the close-out payment will be pro-rated accordingly (i.e. If 90% of trainees receive a wage increase, the business will receive 90% of the Close-out Payment.)

Additionally, the Account Manager will send the business three evaluation forms:

- **Business Results Survey** – this survey gives businesses the opportunity to answer questions related to the successes and challenges of the training project.
- **Business Satisfaction Survey** – this survey allows businesses to share its experience with the overall training program and Customized Training staff and provide recommendations or feedback.
- **Trainee Feedback Form** – this form allows trainees to give anonymous feedback on the overall effectiveness of the training.

From these surveys, SBS hopes to learn more about key outcomes such as:

- New or upgraded skills for trainees
- Revenue Increases
- Certifications or licenses obtained
- Increase or retention of customers
- Productivity or efficiency increases
- Decrease in turnover rate

IV. Examples of Past awards

The following are examples of recent NYC Business Solutions Customized Training projects:



Training on recently purchased equipment or software:

A wholesale food distributor trained its employees on new inventory management software that would allow it to decrease order processing errors to vendors.

Training to offer new services/products to reach new markets:

A food manufacturing company trained its employees in food technology and national and international quality certifications. These upgrades allowed the business to reach larger retailers.

Training to promote current staff to new positions or give current staff new skills to advance into hard-to-fill positions or take on significant new responsibilities:

A home care agency used training to advance 10 home care workers into supervisory and administrative roles, leading to better care coordination and cost reduction.

Training to update obsolete skills that are necessary in order for the business to be competitive:

An auto body shop taught its employees to service the hybrid and electric vehicles that were arriving with increasing frequency at its shop.

Helpful Links:

[Federal Selective Service Registration and Information](#)

[New York State Department of Labor Minimum Wage Requirements](#)

[Federal Department of Labor Minimum Wage Requirements](#)

EXHIBIT E
CUSTOMER INFORMATION FORM



Customer Information Form - NYC Business Solutions Training

This Customer Information Form is confidential and registers you as a recipient of training funded in part by NYC Business Solutions Training.

Please print clearly in ink. Please be sure to **SIGN AND DATE** this form.

Company Information	Company Name: _____
Customer Information	Name: _____ Social Security No. _____ <div style="display: flex; justify-content: space-between; font-size: small;"><div>Last</div><div>First</div><div>Middle Initial</div><div>xxx - xx - xxxx</div></div>
	Gender: <input type="checkbox"/> Female <input type="checkbox"/> Male Date of Birth ____/____/____ <div style="text-align: right; font-size: small;">Month/Day/Year</div>
	Address: _____
	City: _____ State: _____ Zip Code: _____
Education Level	Highest level of education completed: <input type="checkbox"/> Less Than High School (Please indicate last grade level completed _____) <input type="checkbox"/> GED <input type="checkbox"/> High School <input type="checkbox"/> Some College <input type="checkbox"/> Associate's <input type="checkbox"/> Bachelor's <input type="checkbox"/> Master's <input type="checkbox"/> Doctoral
	Are you currently enrolled in school? <input type="checkbox"/> Yes - If so, what level? <div style="margin-left: 150px;"><input type="checkbox"/> High School/GED <input type="checkbox"/> College/Vocational/Professional Degree</div>
	<div style="text-align: right;"><input type="checkbox"/> No</div>
Military Service	Are you a Service Veteran? <input type="checkbox"/> Yes <input type="checkbox"/> No
	Dates of Active Service Start _____ End _____
Demographic Information (optional)	Are you a disabled veteran? <input type="checkbox"/> Yes <input type="checkbox"/> No
	Ethnicity: <input type="checkbox"/> Hispanic/Latino/Latina <input type="checkbox"/> Not Hispanic/Latino/Latina
	Race: <input type="checkbox"/> Asian <input type="checkbox"/> White <input type="checkbox"/> American Indian or Alaskan native <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian/Pacific Islander <input type="checkbox"/> Other
<p>I certify, to the best of my knowledge, I have provided true, accurate, and complete information on this form. I understand that the information I have supplied may be subject to verification and used for New York State and Federal reporting purposes. I also certify that I have received the Workforce Investment Act Notice of Rights and a Voter Registration form. I understand that registering to vote is voluntary and that I am not required to do so in order to obtain NYC Business Solutions Training Funds services. I hereby authorize my employer to release information about my employment to the New York State Department of Small Business Services and the New York State Department of Labor. Information may include but is not limited to: job title, wages, job start/end date, and number of hours worked/week. I understand this information may be shared with other governmental agencies for the purposes of program administration.</p> <p>Signature _____ Date _____ / _____ / _____</p>	

FOR OFFICE USE ONLY

<input type="checkbox"/>	Verification of Birth Date	Notes
<input type="checkbox"/>	Pending	
<input type="checkbox"/>	Birth Certificate	
<input type="checkbox"/>	Driver's License	
<input type="checkbox"/>	Passport	
<input type="checkbox"/>	School Records / Identification Card	
<input type="checkbox"/>	Federal, State or Local Government ID Card	
<input type="checkbox"/>	Work Permit	
<input type="checkbox"/>	DD-214: U.S. Military Report of Transfer or Discharge	
<input type="checkbox"/>	Public Assistance / Social Services Records	
<input type="checkbox"/>	Other _____	

APPENDIX A
INVESTIGATION CLAUSE

- A.** The parties to this Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction.
- B.** If any person who has been advised that his or her statement and any information from such statement will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract or license entered into with the City, the State or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City or any public benefit corporation organized under the laws of the State of New York, or
- C.** If any person refuses to testify for a reason other than the assertion of his or her privilege against self incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then
- D.** The Commissioner or Agency Head whose agency is a party in interest to the transaction, shall convene a hearing, upon not less than five (5) days written notice to the parties involved, to determine if any penalties shall attach for the failure of a person to testify.
- E.** If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit or license pending the final determination pursuant to paragraph (G) below without the City incurring any penalty of damages for delay or otherwise.
- F.** The penalties which may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:
- 1.** The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or
 - 2.** The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals or fees accrued prior to the cancellation or termination shall be paid by the City.
- G.** The Commissioner or Agency Head shall consider and address in reaching his/her determination and in assessing an appropriate penalty the factors in subparagraphs (G)(1) and (G)(2) below. He/She may also consider, if relevant and appropriate, the criteria established in paragraphs (G)(3) and (G)(4) below in addition to any other information which may be relevant and appropriate:

1. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
2. The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
3. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.
4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under (G) above, provided that the party or entity has given actual notice to the Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in (D) above, gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

H. Definitions:

1. The term “*license*” or “*permit*” as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.
2. The term “*person*” as used herein shall be defined as any natural person doing business alone or associated with another person or entity as partner, director, officer, principal or employee.
3. The term “*entity*” as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases or permits from or through the City or otherwise transacts business with the City.
4. The term “*member*” as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

- I.** In addition to and notwithstanding any other provision of this Agreement, the Commissioner or Agency Head may in his/her sole discretion terminate this Agreement upon not less than three (3) days written notice in the event the non-City party or parties to this Agreement fail(s) to promptly report, in writing, to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of said non-City party or parties for any purpose which may be related to the procurement or obtaining of this Agreement by the non-City party or parties, or affecting the performance of this Agreement.

APPENDIX B

UNIFORM FEDERAL CONTRACT PROVISIONS RIDER FOR FEDERALLY FUNDED PROCUREMENT CONTRACTS

This Agreement is subject to 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) and is subject to the following federal required contract provisions:

A. *Definitions.* As used in this Rider:

- (1) “Awarding Entity” means the entity awarding the Contract. The Awarding Entity may be the WDC or a contractor at any tier.
- (2) “WDC” means the Workforce Development Corporation.
- (3) “Executive Director” means the head of the WDC or his/her designee.
- (4) “Construction” means the building, rehabilitation, alteration, conversion, extension, demolition, painting or repair of any improvement to real property.
- (5) “Contract” refers to the contract or the agreement between the Awarding Entity and the Contractor.
- (6) “Contractor” means the entity performing the services pursuant to a Contract.
- (7) “Federal Agency” means the U.S. agency or agencies funding this Contract in whole or in part.
- (8) “Government” means the U.S. government.
- (9) “Rider” means this Uniform Federal Contract Provisions Rider.

B. *Termination and Remedies for Breach of Contract.* The following provisions concerning remedies for breach of contract and termination apply to Contracts between the WDC and the WDC’s Contractor.

- (1) **Remedies for Breach of Contract.** If the Contractor violates or breaches the Contract, the WDC may avail itself of any or all of the remedies provided for elsewhere in this Contract. If there are no remedies provided for elsewhere in this Contract, the WDC may avail itself of any or all of the following remedies.

After declaring the Contractor in default pursuant to the procedures in paragraph (a) of subdivision (2) of this section (B) below, the WDC may (i) withhold payment for unsatisfactory services, (ii) suspend or terminate the Contract in whole or in part; and/or (iii) have the services under this Contract completed by such means and in such manner, by contract procured with or without competition, or otherwise, as the WDC may deem advisable in accordance with all applicable Contract provisions and law. After completion of the services under this Contract, the WDC shall certify the expense incurred in such completion, which shall include the cost of procuring that contract. Should the expense of such completion, as certified by the WDC, exceed the total sum which would have been payable under the Contract if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the WDC. The excess expense of such completion, including any and all related and

incidental costs, as so certified by the WDC may be charged against and deducted out of monies earned by the Contractor.

(2) **Termination.** The WDC shall have the right to terminate the Contract in whole or in part for cause, for convenience, due to force majeure, or due to reductions in federal funding. If the Contract does not include termination provisions elsewhere, the following termination provisions apply:

a. **Termination for Cause.** The WDC shall have the right to terminate the Contract, in whole or in part, for cause upon a determination that the Contractor is in default of the Contract. Unless a shorter time is determined by the WDC to be necessary, the WDC shall effect termination according to the following procedure:

- i. *Notice to Cure.* The WDC shall give written notice of the conditions of default signed by the Executive Director, setting forth the ground or grounds upon which such default is declared ("Notice to Cure"). The Contractor shall have ten (10) days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Executive Director may temporarily suspend services under the Contract pending the outcome of the default proceedings pursuant to this section.
- ii. *Opportunity to be Heard.* If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Executive Director may declare the Contractor in default. Before the Executive Director may exercise his or her right to declare the Contractor in default, the Contractor must be given an opportunity to be heard upon not less than five (5) business days' notice. The Executive Director may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.
- iii. *Notice of Termination.* After an opportunity to be heard, the Executive Director may terminate the Contract, in whole or in part, upon finding the Contractor in default. The Executive Director shall give the Contractor written notice of such termination ("Notice of Termination"), specifying the applicable provision(s) under which the Contract is terminated and the effective date of termination. If no date is specified in the Notice of Termination, the termination shall be effective either 10 calendar days from the date the notice is personally delivered or 15 calendar days from the date Notice of Termination is sent by another method. The Notice of Termination shall be personally delivered, sent by certified mail return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope.
- iv. *Grounds for Default.* The WDC shall have the right to declare the Contractor in default:
 1. Upon a breach by the Contractor of a material term or condition of this Contract, including unsatisfactory performance of the services;
 2. Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or

composition of the Contractor for the benefit of creditors;

3. If the Contractor refuses or fails to proceed with the services under the Contract when and as directed by the Executive Director;

4. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Contract under any state or federal law of any of the following:

a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;

b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;

c. a criminal violation of any state or federal antitrust law;

d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or

f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a WDC vendor.

5. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

6. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for WDC, City of New York, or government work.

v. *Basis of Settlement.* The WDC shall not incur or pay any further obligation pursuant to this Contract beyond the termination date set by the WDC in its Notice of Termination. The WDC shall pay for satisfactory services provided in accordance with this Contract prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Contract prior to receipt of notice of termination and falling due after the termination date shall be paid by the WDC in accordance with the terms of this Contract. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

b. **Termination for Convenience.** The WDC shall have the right to terminate the Contract for convenience, by providing written notice ("Notice of Termination") according to the following procedure. The Notice of Termination shall specify the applicable provision(s) under which the

Contract is terminated and the effective date of termination, which shall be not less than 10 calendar days from the date the notice is personally delivered or 15 days from the date the Notice of Termination is sent by another method. The Notice of Termination shall be personally delivered, sent by certified mail return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope. The basis of settlement shall be as provided for in subparagraph (iv) of paragraph (a) of subdivision (2) of this section (B), above.

c. Termination due to Force Majeure

- i. For purposes of this Contract, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor ("Force Majeure Event"). Force Majeure Events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.
- ii. In the event the Contractor cannot comply with the terms of the Contract (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Executive Director to excuse the nonperformance and/or terminate the Contract. If the Executive Director, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Contract because of a Force Majeure Event, then the Executive Director shall excuse the nonperformance and may terminate the Contract. Such a termination shall be deemed to be without cause.
- iii. If the WDC terminates the Contract due to a Force Majeure Event, the basis of settlement shall be as provided for in subparagraph (iv) of paragraph (a) of subdivision (2) of this section (B), above.

d. Termination due to Reductions in Federal Funding

- i. This Contract is funded in whole or in part by funds secured from the Federal government. Should the Federal government reduce or discontinue such funds, the WDC shall have, in its sole discretion, the right to terminate this Contract in whole or in part, or to reduce the funding and/or level of services of this Contract caused by such action by the Federal government, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract- reimbursable staff or staff-hours, and corresponding reductions in the budget of this Contract and in the total amount payable under this Contract. Any reduction in funds pursuant to this paragraph shall be accompanied by an appropriate reduction in the services performed under this Contract.
- ii. In the case of the reduction option referred to in subparagraph (i), above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than 30 calendar days from the date of such notice. Prior to sending such notice of reduction, the WDC shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven calendar days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided,

however, that the WDC shall not be bound to utilize any of the Contractor's suggestions and that the WDC shall have sole discretion as to how to effectuate the reductions.

- iii. If the WDC reduces funding pursuant to this paragraph (c), the basis of settlement shall be as provided for in subparagraph (iv) of paragraph (a) of subdivision (2) of this section (B), above.

C. Standard Provisions. The Contractor shall comply with, include in its subcontracts, and cause its subcontractors to comply with the following provisions, as applicable:

- (1) *Reporting.* Contractor shall be required to produce and deliver such reports relating to the services performed under the Contract as may be required by the Awarding Entity, City of New York, or any other State or Federal governmental agency with jurisdiction.
- (2) *Non-Discrimination.* Contractor shall not violate any Federal, State, or City law prohibiting discrimination concerning employment, the provision of services, and, if applicable, housing, funded by this Contract.
- (3) *Environmental Protection.* If the Contract is in excess of \$150,000, the Contractor shall comply with all applicable standards, orders, or regulations issued under the Clean Air Act (42 U.S.C. § 7401-7671q), Federal Water Pollution control Act (33 U.S.C. §§ 1251-1387) Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (provisions of 40 CFR Part 50 and 2 CFR Part 1532 related to the Clean Air Act and Clean Water Act). Violations must be reported to the Federal Agency and the Regional Office of the Environmental Protection Agency (EPA).
- (4) *Energy Efficiency.* The Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in the New York State energy conservation plan issued in compliance with the Energy Policy Conservation Act (Pub. L. 94-163).
- (5) *Debarment.* The Contractor certifies that neither it nor its principals is currently in a state of debarment, suspension, or other ineligible status as a result of prior performance, failure, fraud, or violation of City laws. The Contractor further certifies that neither it nor its principals is debarred, suspended, otherwise excluded from or ineligible for participation in Federal assistance programs. The WDC reserves the right to terminate this Contract if knowledge of debarment, suspension or other ineligibility has been withheld by the Contractor.
- (6) *Byrd Anti-Lobbying Amendment (31 USC §1352).* Contractor certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, officer or employee of Congress, or any employee of a member of Congress in connection with obtaining this Contract. If the Contract is \$100,000 or more, the Contractor shall disclose to the WDC any lobbying with non-Federal funds that took place in connection with obtaining this Contract.
- (7) *Solid Waste Disposal Act.* Pursuant to 2 CFR § 200.322, Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$ 10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- (8) *Documentation of Costs.* All costs shall be supported by properly executed payrolls, time records, invoices, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents, pertaining in whole or in part to the Agreement, shall be clearly identified and regularly accessible.
- (9) *Records Retention.* The Contractor shall retain all books, documents, papers, and records relating to the services performed under the Contract for six years after final payment under the Contract is made and all other pending matters are closed.
- (10) *Records Access.* The Contractor shall grant access to the WDC, City of New York, State or any other pass-through entity, the Federal Agency, Inspectors General, and/or the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and/or records of the Contractor that are pertinent to the Contract for the purpose of making audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the Contractor's personnel for the purpose of interview and discussion related to such documents. The rights of access in this section are not limited to the required retention period but last as long as the records are retained.
- (11) *Small Firms, M/WBE Firms, and Labor Surplus Area Firms.* Contractor shall take the following affirmative steps in the letting of subcontracts, if subcontracts are to be let, in order to ensure that minority firms, women's business enterprises, and labor surplus area firms are used when possible:
- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
 - e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
- (12) *Intangible Property.*
- a. Pursuant to 2 CFR § 200.315(d), the Government reserves a royalty-free, non-exclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use, and to authorize others to use, for Government purposes: (a) the copyright in any work developed under the Contract or subcontract; and (b) any rights of copyright to which a Contractor purchases ownership with grant support.
 - b. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to the Contract ("Copyrightable Materials"), and any and all drafts and/or other preliminary materials in any format related to such items created pursuant to the contract, shall upon their creation become the exclusive property of the City. The Copyrightable Materials shall be considered "work- made-for-hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17

U.S.C. § 101, and the WDC shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as “work-made-for-hire,” the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the WDC, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials, with the exception of materials that existed prior to or were developed or discovered independently from the activities directly related to this Agreement as outlined in Section 23. The WDC may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the WDC and set forth in the license.

- c. The Contractor acknowledges that the WDC may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.
- d. The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Contract, copies of which shall be provided to the WDC upon execution of this Contract.
- e. The Contractor shall promptly and fully report to the WDC any discovery or invention arising out of or developed in the course of performance of this Contract and the Contractor shall promptly and fully report to the Government to make a determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.
- f. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the WDC and City of New York shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for non-commercial and/or governmental purposes.

D. Rights to Inventions.

- (1) If this Contract involves the performance of experimental, developmental, or research work by the Contractor or its subcontractors, and the entity performing such work is a Nonprofit Organization or Small Business Firm as defined below, the following provisions apply in addition to those set forth above in paragraphs (A), (B), and (C), unless the Contract specifically states that this provision is superseded:
 - a. *Definitions.* The following definitions apply to this section (D).
 - i. “Invention” means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under

- ii. "Subject invention" means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this Contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of Contract performance.
 - iii. "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.
 - iv. "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.
 - v. "Small Business Firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.
 - vi. "Nonprofit Organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.
- b. *Allocation of Principal Rights.* The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.
- c. *Invention Disclosure, Election of Title and Filing of Patent Application by Contractor.*
- i. The Contractor will disclose each subject invention to the WDC and the Federal Agency within two months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. Such disclosure shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of

disclosure. In addition, after such disclosure, the Contractor will promptly notify the WDC and the Federal Agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

- ii. The Contractor will elect in writing whether or not to retain title to any such invention by notifying the WDC and the Federal Agency within two years of disclosure to the WDC and the Federal Agency. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the Federal Agency to a date that is no more than 60 days prior to the end of the statutory period.
- iii. The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
- iv. Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may be granted at the discretion of the Federal Agency.

d. Conditions When the Government May Obtain Title

The Contractor will convey to the Federal Agency, upon written request, title to any subject invention --

- i. If the Contractor fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the Federal Agency may only request title within 60 calendar days after learning of the failure of the Contractor to disclose or elect within the specified times.
- ii. In those countries in which the Contractor fails to file patent applications within the times specified in (c) above; provided, however, that if the Contractor has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the Federal Agency, the Contractor shall continue to retain title in that country.
- iii. In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

e. Minimum Rights to Contractor and Protection of the Contractor Right to File.

- i. The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the contractor fails to disclose the invention within the times specified in (c), above. The Contractor's license extends to its domestic subsidiary and

affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the Contract was awarded. The license is transferable only with the approval of the Federal Agency except when transferred to the successor of that party of the Contractor's business to which the invention pertains.

- ii. The Contractor's domestic license may be revoked or modified by the funding Federal Agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal Agency to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
- iii. Before revocation or modification of the license, the funding Federal Agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty calendar days (or such other time as may be authorized by the funding Federal Agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and Federal Agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

f. Contractor Action to Protect the Government's Interest

- i. The Contractor agrees to execute or to have executed and promptly deliver to the Federal Agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the contractor elects to retain title, and (ii) convey title to the Federal Agency when requested under paragraph (d) above and to enable the Government to obtain patent protection throughout the world in that subject invention.
- ii. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
- iii. The Contractor will notify the Federal Agency of any decisions not to

continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty calendar days before the expiration of the response period required by the relevant patent office.

- iv. The Contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Federal Agency). The government has certain rights in the invention."

g. *Subcontracts.*

- i. The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.
 - ii. The Contractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by 2 CFR § 200.315(c) and Appendix II to 2 CFR Part 200.
- h. *Reporting on Utilization of Subject Inventions.* The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the Federal Agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the Federal Agency in connection with any march-in proceeding undertaken by the Federal Agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. § 202(c)(5), the Federal Agency agrees it will not disclose such information to persons outside the Government without permission of the Contractor.
- i. *Preference for United States Industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal Agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.
 - j. *March-in Rights.* The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal Agency has the right in accordance with the procedures in 37 CFR § 401.6 and any supplemental regulations of the Federal Agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of

use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request the Federal Agency has the right to grant such a license itself if the Federal Agency determines that:

- i. Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
 - ii. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee or their licensees;
 - iii. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee or licensees; or
 - iv. Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
- k. *Special Provisions for Contracts with Nonprofit Organizations.* If the Contractor is a nonprofit organization, it agrees that:
- i. Rights to a subject invention in the United States may not be assigned without the approval of the Federal Agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Contractor;
 - ii. The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the Federal Agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. § 202(e) and 37 CFR § 401.10;
 - iii. The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and
 - iv. It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are Small Business Firms and that it will give a preference to a Small Business Firm when licensing a subject invention if the Contractor determines that the Small Business Firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not Small Business Firms; provided, that the Contractor is also satisfied that the Small Business Firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Secretary may review the Contractor's licensing program and decisions regarding Small Business Firm applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that the Contractor could take

reasonable steps to implement more effectively the requirements of this paragraph (k)(iv).

1. *Communication.* The central point of contact at the Federal Agency for communications on matters relating to this clause may be obtained from the WDC upon request.

E. Special Provisions for Construction Contracts. If this Contract involves Construction work, design for Construction, or Construction services, all such work or services performed by the Contractor and its subcontractors shall be subject to the following requirements in addition to those set forth above in paragraphs (A), (B), and (C):

(1) *Federal Labor Standards.* The Contractor will comply with the following:

- a. The Davis-Bacon Act (40 U.S.C. §§ 3141-3148): If required by the federal program legislation, in Construction contracts involving an excess of \$2000, and subject to any other federal program limitations, all laborers and mechanics must be paid at a rate not less than those determined by the Secretary of Labor to be prevailing for the City, which rates are to be provided by the WDC. These wage rates are a federally mandated minimum only, and will be superseded by any State or City requirement mandating higher wage rates. The Contractor also agrees to comply with Department of Labor Regulations pursuant to the Davis-Bacon Act found in 29 CFR Parts 1, 3, 5 and 7 which enforce statutory labor standards provisions.
- b. If required by the federal program legislation and subject to any other federal program limitations, Sections 103 and 107 of the Contract Work Hours and Safe Standards Act (40 U.S.C. §§ 3701-3708), which provides that no laborer or mechanic shall be required or permitted to work more than eight hours in a calendar day or in excess of forty hours in any workweek, unless such laborer or mechanic is paid at an overtime rate of 1½ times his/her basic rate of pay for all hours worked in excess of these limits, under any Construction contract costing in excess of \$2000. In the event of a violation of this provision, the Contractor shall not only be liable to any affected employee for his/her unpaid wages, but shall be additionally liable to the United States for liquidated damages.
- c. The Copeland “Anti-Kickback” Act (18 U.S.C. § 874), as supplemented by the regulations contained in 29 CFR Part 3, requiring that all laborers and mechanics shall be paid unconditionally and not less often than once a week, and prohibiting all but “permissible” salary deductions.
- d. If this Contract involves Construction work, design for Construction, or Construction services, a more complete detailed statement of Federal Labor Standards annexed hereto as FEDERAL EXHIBIT 2.

(2) *Equal Employment Opportunity.* Executive Order 11246, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR chapter 60) for Construction contracts or subcontracts in excess of \$10,000. The Contractor shall include the notice found at FEDERAL EXHIBIT I in all Construction subcontracts.

Standard Federal Equal Employment Opportunity Construction Contract Specifications for Contracts and Subcontracts in Excess of \$10,000.

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this Contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any Construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each Construction trade in which it has employees in the covered area. Covered Construction Contractors performing Construction work in geographical areas where they do not have a Federal or federally assisted Construction contract shall apply the minority and female goals established for the geographical areas where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations

promulgated pursuant thereto.

In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

6. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each Construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where Construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of Construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female Construction contractors and suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

7. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a Contractor association, joint Contractor-union, Contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the Program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

8. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

9. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

10. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246 or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.

The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the

Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

11. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

12. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, Construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

13. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for hiring of local or other areas residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

APPENDIX C

COMBINED FEDERAL & STATE CERTIFICATIONS

The funding for the awards granted under this contract is provided by the United States Department of Labor which requires the following certifications:

A. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Contractor, the prospective lower tier participant, certifies, by entering into this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statement in this certification, such prospective participant shall attach an explanation to this proposal.
3. The prospective lower tier participant shall pass the requirements of A.1. and A.2., above, to each person or entity with whom the participant enters into a covered transaction at the next lower tier.

B. CERTIFICATION REGARDING LOBBYING

The undersigned representative of Contractor 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.

- a. 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.
- b. The signer shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of facts upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C. **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.**

C. DRUG FREE WORKPLACE

Contractor will provide a Drug Free Workplace by implementing the provisions at 29 CFR 94, pertaining to the Drug Free Workplace. In accordance with these provisions, a list of places where performance of work is done in connection with this specific Agreement will take place must be maintained at your office and available for Federal inspection.

D. NONDISCRIMINATION & EQUAL OPPORTUNITY ASSURANCE

As a condition to the award of financial assistance from the Department of Labor under Title I of the Workforce Innovation and Opportunity Act of 2014 (Pub. Law 113-128) (WIOA), Contractor assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

1. Section 188 of WIOA which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age disability, political affiliation, or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIOA Title I - financially assisted program or activity;
2. Title VI of the Civil Rights Act of 1964, as amended which prohibits discrimination on the basis of race, color, and national origin;
3. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;
4. The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and
5. Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

Contractor also assures that it will comply with 29 CFR Part 37 and all other regulations implementing the laws listed above. This assurance applies to Contractor's operation of the WIOA Title I - financially assisted program or activity, and to all agreements Contractor makes to carry out the WIOA Title I-financially assisted program or activity. Contractor understands that the United States has the right to seek judicial enforcement of this assurance.

E. BUY AMERICAN NOTICE REQUIREMENT

Contractor assures that, to the greatest extent practicable, all equipment and products purchased with funds made available under the WIOA will be American made. *See* WIOA Section 502 – Buy American Requirements.

F. SALARY AND BONUS LIMITATIONS

In compliance with Public Laws 110-161, none of the federal funds appropriated in the Act under the heading 'Employment and Training' shall be used by a subrecipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II. This limitation shall not apply to vendors providing goods and services as defined in OMB Circular A-133. *See* Training and Employment Guidance Letter number 5-06 for further clarification. Where applicable, Contractor agrees to comply with the Salary and Bonus Limitations.

G. VETERANS' PRIORITY PROVISION

Federal grants for qualified job training programs funded, in whole or in part, by the U.S. Department of Labor are subject to the provisions of the "Jobs for Veterans Act" (JVA), Public Law 107-288 (38 USC 4215). The JVA provides priority

of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services. Please note that to obtain priority service, a person must meet the program's eligibility requirements. Training and Employment Guidance Letter (TEGL) No. 5-03 (September 16, 2003) and Section 20 of the Code of Federal Regulations (CFR) Part 1010 (effective January 19, 2009) provide general guidance on the scope of the veterans priority statute and its effect on current employment and training programs. Where applicable, Contractor agrees to comply with the Veteran's Priority Provisions.

STATE CERTIFICATIONS

H. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND OUTSTANDING DEBTS

The undersigned, as a duly sworn representative of Contractor, hereby attests and certifies that:

1. No principal or executive officer of Contractor's company, its subcontractor(s) and/or successor(s) is presently suspended or debarred;
2. Contractor, its subcontractor(s) and/or its successor(s) is not ineligible to submit a bid on, or be awarded, any public work contract or sub-contract with the State, any municipal corporation or public body for reason of debarment for failure to pay the prevailing rate of wages, or to provide supplements, in accordance with Article 8 of the New York State Labor Law; and
3. Contractor, its subcontractor(s) and/or its successor do not have any outstanding debts owed to the Department, including but not limited to, contractual obligations, fines related to Safety and Health violations, payments owed to workers for public works projects or the general provisions of the Labor Law, unemployment insurance contributions or other related assessments, penalties or charges.

I. CERTIFICATION REGARDING "NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND: MacBRIDE FAIR EMPLOYMENT PRINCIPLES"

In accordance with Chapter 807 of the Laws of 1992, Contractor, by entering into this Agreement, certifies that it or any individual or legal entity in which Contractor holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in Contractor, either:

(answer Yes or No to one or both of the following, as applicable.)

1. Has business operations in Northern Ireland:

_____ Yes

_____ No

If Yes:

2. Shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of its compliance with such Principles.

_____ Yes

_____ No

J. NON-COLLUSIVE BIDDING CERTIFICATION

By entering into this Agreement, Contractor and each person signing on behalf of Contractor certifies, under penalty of perjury, that to the best of his or her knowledge and belief:

1. The prices in Contractor's proposal submitted in response to the Solicitation were arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor;
2. Unless otherwise required by law, the prices quoted in the proposal were not knowingly disclosed by the proposer, directly or indirectly, to any other proposer or to any competitor; and
3. No attempt was made by Contractor to induce any other person, partnership or corporation to submit or not to submit a proposal in response to the Solicitation for the purpose of restricting competition.

K. IRAN DIVESTMENT ACT

By submitting a proposal in response to the Solicitation and by assuming the responsibility of the Agreement awarded thereunder, Contractor (or any assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such an Agreement any subcontractor that is identified on the Prohibited Entities List. Additionally, Contractor is advised that should it seek to renew or extend an Agreement awarded in response to the Solicitation, it must provide the same certification at the time the Agreement is renewed or extended.

During the term of the Agreement, should The New York State Department of Labor ("NYSDOL") receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, NYSDOL will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then NYSDOL shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

The WDC reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension, or assignment of the Agreement, and to pursue a responsibility review with Contractor should it appear on the Prohibited Entities List hereafter.

I, the undersigned, attest under penalty of perjury that I am an authorized representative of the Contractor and that the foregoing statements are true and accurate.

Signature of Authorized Representative _____

Printed Name _____

Title _____

Date _____