PART III

Terms and Conditions

3.0 LEGAL AUTHORITY

3.0.1 The persons signing this Contract Agreement on behalf of the parties warrant and guarantee their full authorization to execute the Contract Agreement and to legally bind the parties to all the terms, performance requirements, and provisions set forth.

3.1 AWARDING ENTITY

3.1.1 As the awarding entity, the Catawba Regional Council of Governments (CRCOG), has the following oversight responsibilities:

* Providing technical assistance, as requested by the Contractor or deemed necessary by CRCOG;
* Conducting programmatic and financial monitoring of the Contract project;
* Ensuring compliance with WIOA Public Law 113-128 and implementing Federal regulations, the OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200), as well as State laws and policies applicable to the Contract Agreement;
* Disbursing funds to the Contractor to pay for allowable expenses or services provided in accordance with applicable State and Federal laws upon receipt of proper supporting documentation of disbursement amounts previously drawn down; and
* Evaluating the Contractor against specific deliverables and performance requirements as outlined in Part I – Program Statement of Work.

3.2 FINANCIAL SYSTEM AND Reporting

3.2.1 The Contractor is responsible for developing and implementing procedures and standards for reporting financial, programmatic, and customer information in the required timeframes and using the systems and formats specified by CRCOG.

3.2.2 The Contractor shall maintain fiscal records and supporting documentation for all expenditures of funds under the Contract Agreement. The Contractor must provide adequate, qualified staff to prepare required reports. Proper internal controls are required to ensure separation of duties.

3.2.3 Costs incurred by the Contractor prior to the start date specified in the Contract Agreement are incurred at the Contractor’s own expense. Prior authorization for pre-award spending must be obtained from SC Department of Employment and Workforce (DEW) and the US Department of Labor before any costs are incurred.

3.2.4 Payment by CRCOG of Indirect Costs incurred requires the Contractor to submit its approved Indirect Cost Rate or Acceptance of Certification of Indirect Costs from its cognizant agency upon receipt. If DEW is the cognizant agency for the contract recipient, an Indirect Cost Rate proposal must be submitted to DEW no later than 180 days after the June 30 fiscal year end. Failure to do so may result in the disallowance of indirect costs. DEW may either disallow all indirect costs or establish a rate based upon audited historical data or such other data that have been furnished to DEW for indirect costs. (2 CFR Part 200.415(b)(2))

3.2.5 The Contractor is required to submit a Financial Status Report (FSR) on a monthly basis. Reports must be submitted no later than the 10th of the following month. Expenditure data is reported cumulatively through the end of each reporting period on an accrual basis.

3.2.6 A Request for Payment must be submitted each time the Contractor wishes to draw down funds, along with proper supporting documentation of disbursements previously drawn down. The Contractor may request funds in advance to cover upcoming cash expenditures and accruals to be paid within a short period of receipt of funds (usually within three (3) business days). The Contractor’s cash needs must be projected to ensure that funds are received as close as possible to the time of actual disbursement in accordance with 2 CFR Part 200.305. Cash on hand should be limited to the amount needed for immediate disbursement.

3.2.7 The Contractor will submit a complete Contract Closeout Report to CRCOG no later than forty-five (45) calendar days after the contract end date. DEW will supply the closeout forms and instructions prior to contract expiration.

3.3 RECORDKEEPING

3.3.1 CRCOG, and any of its authorized representatives, must have timely and reasonable access to all Contractor records and personnel related to the Contract Agreement for the purpose of inspection, investigation, monitoring, auditing, evaluation, interview, and discussion. Further, CRRCOG and any of its authorized representatives, have the right to copy all records pertaining to the Contract Agreement.

3.3.2 The Contractor shall comply with requirements for custody and retention of records as set forth in 2 CFR Part 200, as applicable. Records must be retained for no less than three years after submittal of the Contract Agreement closeout to CRCOG or the last request for contract records during an audit, whichever is most recent. If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken (2 CFR Part 200.333).

3.3.3 The Contractor assures it will comply with Federal and State laws and guidelines for the handling and protection of Personally Identifiable Information, including but not limited to 2 CFR Part 200.79 and US Department of Labor Training and Employment Guidance Letter 39-11, *Guidance on the Handling and Protection of Personally Identifiable Information (PII)*, located at <https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7872>.

3.3.4 The Contractor agrees to maintain the confidentiality of any information that identifies or may be used to identify any contract and benefit participants. The Contractor shall not disclose or re-disclose any employer or personally identifying information of the subject of the information unless permitted by law.

3.3.5 All releases of information shall be in accordance with State and Federal law, regulations and guidelines, including but not limited to S.C. Code Ann. § 41-29-160; the Family Privacy and Protection Act (S.C. Code Ann. § 30-2-10 et al), 20 CFR 603, and IRS Publication 1075.

3.4 PROCUREMENT

3.4.1 The Contractor must have written procedures for procurement transactions that comply with State regulations. Procedures may reflect applicable local laws and regulations, provided they conform to applicable Federal law and the standards identified in 2 CFR Parts 200.318 through 200.326.

3.4.2 Procurement standards must ensure fiscal accountability and prevent waste, fraud, and abuse. The Contractor will conduct procurement in a manner that provides full and open competition consistent with the standards of 2 C.F.R Part 200.319.

3.5 Additional Conditions and Enforcement

3.5.1 The Contractor acknowledges and accepts that special additional conditions may be unilaterally imposed by CRCOG in accordance with 2 CFR 200.207. Such conditions may be imposed if the Contractor demonstrates one or more of the following conditions:

* a history of unsatisfactory performance;
* financial instability;
* management system(s) that do not meet standards prescribed in 2 CFR 200.300 et seq.;
* noncompliance with terms and conditions of previous Federal awards or sub awards;
* absence of responsibility disclosed as a result of ongoing evaluation of risk by DEW conducted in accordance with 2 CFR 200.331(b);
* reports and findings from audits performed under 2 CFR Subpart F – Audit Requirements of this part or the reports and findings of any other available audits; and/or
* inability to effectively implement statutory, regulatory, or other requirements.

3.5.2 If CRCOG determines that a contract award will be made or continued, special provisions shall address the condition identified and shall be included in the award. Such provisions may include but are not limited to:

* requiring payments on a reimbursement basis;
* withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
* requiring additional, more detailed financial reports;
* requiring additional project monitoring;
* requiring the Contractor to obtain technical or management assistance and to implement corrective actions; and/or
* establishing additional prior approval.

CRCOG will notify the Contractor regarding the nature and reason for implementing any of the above special provisions.

3.5.3 Failure to comply with any provision of the Contract Agreement, or any applicable law or regulation, may subject the Contractor to additional enforcement actions that are determined by DEW to be appropriate under the circumstances. Such enforcement actions include but may not be limited to:

* requiring special award provisions as stated above;
* temporarily withholding cash payments pending correction of identified deficiencies, as identified in 2 CFR 200.338;
* disallowing cost (and, if appropriate, applicable matching credit) for any claim or action made that is not in compliance and require appropriate repayment or financial adjustment;
* suspending the contract award, in whole or in part, pending corrective action;
* terminating the contract award, in whole or in part;
* withholding further awards for the project or program;
* recommending to appropriate Federal officials that suspension or debarment proceedings be initiated as authorized under 2 CFR 180; and/or
* taking other remedies that may be legally available. (See 2 CFR 200.338.)

3.5.4 The Contract Agreement may be immediately terminated by CRCOG in whole or in part for cause or noncompliance whenever such non-compliance is material and in the best interest of the Contractor, CRCOG, DEW, or the US Department of Labor.

3.5.5 Appeals regarding monitoring findings and/or enforcement actions may be appealed as follows:

1. Within 14 days of receipt of the final monitoring determination or notice of enforcement action, a written appeal may be made to the Catawba Workforce Development Board (WDB).

2. The PDWDB will issue a written decision within 30 days.

3. If dissatisfied with the decision, a written appeal may be made to the State Workforce Development Board (SWDB) within 14 days of receipt of decision.

4. The Chair will designate the Executive Committee or an Ad Hoc Committee of at least five SWDB members to hear the appeal.

5. The SWDB will hear the appeal and render a decision within 60 days.

6. The Contractor will be notified in writing of the SWDB’s decision within 20 days.

3.5.6 Appeal requests made to the SWDB must be submitted in writing as follows:

 South Carolina Department of Employment and Workforce

 Attn: Appeals, State Workforce Development Board

 1550 Gadsden Street

 Columbia, SC 29201

3.6 CHANGES AND AMENDMENTS

3.6.1 Any alterations, additions, or deletions to the terms of the Contract Agreement which are required by changes in Federal or State law or regulations are automatically incorporated into the Contract Agreement without written amendment, and shall become effective on the date designated by such law or regulation.

3.6.2 Alterations, additions, deletions, or extensions to the terms of the Contract Agreement must be modified in writing and executed by both Parties. Any other attempted changes, including oral modifications, shall be invalid.

3.6.3 To ensure effective performance under the Contract Agreement, the Parties agree that CRCOG may amend requirements in writing during the contract period to interpret or clarify a change in Federal or State law, rules or regulations.

* 1. ASSURANCES

3.7.1 As a condition to the award of financial assistance from the US Department of Labor under Title I of WIOA, the Contractor assures that it will comply fully with the following nondiscrimination provisions, equal opportunity provisions, Public Laws and Executive Orders, including but not limited to:

1. *WIOA Section 188 (29 CFR, Part 38),* which provides that no individual may be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of, or in connection with, any program or activity because of race, color, religion, sex (including gender identity, gender expression, and sex stereotyping), national origin, age, disability, political affiliation or belief, and, for beneficiaries only, citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or participation in a WIOA Title I-financially assisted program or activity;
2. *Title VI The Civil Rights Act of 1964 (42 U.S.C. §2000d, et seq.)*, *as amended by the Equal Employment Opportunity Act of 1972,* which prohibits discrimination on the basis of race, color, religion, sex and national origin, and applies to any program or activity receiving Federal financial aid, and to all employers, including state and local governments, public and private employment agencies, and labor organizations;
3. *Title VII of the Civil Rights Act,* as amended, which prohibits discrimination on the basis of race, color, religion, sex, or national origin in employment;
4. *Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794)*, as amended, which prohibits discrimination against qualified individuals with disabilities in all federally-funded programs;
5. *The Age Discrimination Act of 1975 (42 U.S.C. §6101)*, as amended, which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance;
6. *The Americans with Disabilities Act of 1990 (42 U.S.C. §12101)*, as amended, which prohibits discrimination on the basis of physical, sensory, or mental disability or impairment and the ADA Amendments Act of 2008 effective January 1, 2009;
7. *Title IX of the Education Amendments of 1972 (20 U.S.C. §1681-1688)*, as amended, which prohibits discrimination on the basis of sex in educational programs;
8. *Title V of the Older Americans Act of 1965 and all regulations that apply to the Senior Community Services Employment Program*, which generally prohibit discrimination under any program funded in whole or in part with Title V funds because of race, color, religion, sex, national origin, age, disability or political affiliation or beliefs;
9. *Title II of the Genetic Information Nondiscrimination Act of 2008* which prohibits discrimination in employment on the basis of genetic information;
10. *Executive Order 13279, Equal Protection of the Laws for Faith-based and Community Organizations* (signed December 12, 2002), which prohibits discrimination against contract seeking organizations on the basis of religion in the administration or distribution of Federal financial assistance under social service programs, including grants, contracts and loans;
11. *Section 508 of the Rehabilitation Act (29 U.S.C. §794d),* which ensures that individuals with disabilities have comparable access to information and data as do members of the public who are not individuals with disabilities;
12. *Jobs for Veterans Act (38 U.S.C. §4215)*, which requires recipients to provide priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by the US Department of Labor. To obtain priority of service, a veteran or spouse must meet the program’s eligibility requirements. US Department of Labor Training and Employment Guidance Letter 10-09 provides further guidance and can be found at <https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2816>;
13. *P.L. 113-114, Division E, Title VII, Section 743*, which prohibits an entity receiving Federal funds from requiring employees or contractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information;
14. *P.L. 113-114, Division H, Title V, Section 505*, which establishes that when issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all recipients receiving Federal funds shall clearly state:
15. The percentage of the total costs of the program or project which will be financed with Federal money;
16. The dollar amount of Federal funds for the project or program, and
17. The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

 The requirements of this part are separate from those in 2 CFR Part 200 and, when appropriate, both must be complied with.

1. *Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency (LEP),"* which requires that recipients of Federal financial assistance ensure that programs and activities provided in English are accessible to LEP persons and thus do not discriminate on the basis of national origin;
2. *Executive Order 13333*, which establishes this agreement may be terminated without penalty, if the Contractor or any subcontractor engages in: (i) severe forms of trafficking in persons; (ii) the procurement of a commercial sex act during the period of time that the contract is in effect; (iii) the use of forced labor in the performance of the contract; or (iv) acts that directly support or advance trafficking in persons. (22 U.S.C. *§*7104(g));
3. *Buy American Notice Requirement*, which provides that in the case of any equipment or product that may be authorized to be purchased with financial assistance provided using funds available under WIOA, entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products, as required by the Buy American Act (41 U.S.C. *§*10a et seq.);
4. *Executive Order 13043 Increasing Seat Belt Use in the United States (April 16, 1997)*, which provides that recipients of Federal funds are encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating vehicles, whether organizationally owned or rented or personally owned;
5. *Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (October 1, 2009),* which provides that recipients of Federal funds are encouraged to adopt and enforce policies that ban text messaging while driving company-owned or rented vehicles, Government-owned, Government-leased, or Government-rented vehicles, or while driving privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government, and to conduct initiatives of the type described in section 3(a) of the Executive Order;
6. *Special Requirements for Conferences and Conference Space*. Conferences sponsored in whole or in part by the recipient of Federal awards are allowable if the conference is necessary and reasonable for successful performance of the Federal Award. Recipients are urged to use discretion and judgment to ensure that all conference costs charged to the contract are appropriate and allowable. For more information on the requirements and allowability of costs associated with conferences, refer to 2 CFR Part 200.432;
7. The Contractor also assures that it will comply with 29 CFR Part 38, and all other regulations implementing the laws listed above. This assurance applies to the operation of any WIOA Title I financially assisted program or activity, and to all agreements including lease agreements that the Contractor makes to carry out the WIOA Title I financially assisted program or activity. The Contractor understands that the United States has the right to seek judicial enforcement of this assurance, and the State has the authority to withhold funding;
8. All other applicable State and Federal laws, policies and procedures, including those contained within South Carolina’s Methods of Administration for ensuring implementation of the nondiscrimination and equal opportunity provisions as required by 29 CFR Part 38;
9. The Contractor may not deny services under any contract or subcontract to any person and are prohibited from discriminating against any employee, applicant for employment, or beneficiary because of race, color, religion, sex, national origin, age, physical or mental disability, gender identity, gender expression, sex stereotyping, temporary medical condition, political affiliation or belief, citizenship, or his or her participation in any Federal or State financially assisted program and/or activity; and
10. The Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free from discrimination. The Contractor must provide initial and continuing notice that it does not discriminate on any prohibited grounds to applicants for employment and employees (29 CFR *§*38.29(a)(3). The notice must contain specific wording regarding the prohibited bases and the process for filing a complaint, as required by 29 CFR *§*38.30.
	1. CERTIFICATIONS

3.8.1 Lobbying (2 CFR *§*200.450)

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities,"in accordance with its instructions.
	* 1. Debarment, Suspension, and Other Responsibility Matters

The Contractor agrees to comply with 2 CFR Part 200.213, which states that non-Federal entities and contractors are subject to the non-procurement and debarment and suspension regulations.

3.8.3 Drug-Free Workplace (Public Law 100-690)

The Contractor agrees to comply with provisions of 41 U.S.C. §702 in providing a drug-free workplace.