



## SHENANDOAH VALLEY WORKFORCE DEVELOPMENT BOARD, Inc.

### GENERAL PROVISIONS

1. **Definitions.** The following terms shall have the meaning as set forth below:
  - a. “Board” refers to the Shenandoah Valley Workforce Development Board and its staff.
  - b. “Contractor” refers to the entity which has entered into this contract with the Board.
  - c. “May” is permissive.
  - d. “Shall” is imperative.
  - e. “Subcontract” shall mean any contract, agreement, or purchase entered into by the Contractor with a third party for the purpose of procuring property and/or services under this contract.
  
2. **Order of Precedence.** In the event there are inconsistencies or conflicts between the contract and the governing federal and state law and regulations unless otherwise provided therein, the inconsistencies shall be resolved by giving precedence in the following order:
  - a. The Workforce Innovation and Opportunity Act (WIOA) of 2014, 2 CFR Part 200 the Office of Management and Budget’s (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (commonly called “Uniform Guidance”), 2 CFR Part 2900 USDOL Exceptions to Uniform Administrative Requirements, Cost Principles, and Audit Requirements and applicable federal regulations;
  - b. Applicable provisions of the Virginia Code and applicable provisions of the Virginia Administrative Code, including the Virginia Public Procurement Act;
  - c. The terms and conditions of the Workforce Innovation and Opportunity Act (WIOA) Title I Grant Award Agreement between the Virginia Community College System (VCCS) and the Local Workforce Development Area: Shenandoah Valley Workforce Development Board, Inc.;
  - d. Technical assistance guidance and policies provided by the Department of Labor (DOL) in the form of DOL Training and Employment Letters (TEGLs), DOL Training and Employment Notice (TEN), or the Virginia Board of Workforce Development (VBWD) in the form of VBWD policies, or the Virginia Community College System (VCCS) in the form of Virginia Workforce Letters (VWLs);
  - e. Policies and procedures set forth by the Board; and
  - f. The terms and conditions set forth in this document.
  
3. **Financial Limitation.** The Board shall have no liability for any costs incurred above the ceiling limit shown on the Signature Page of this contract. Any costs incurred by the Contractor outside the performance period specified on the Signature Page shall be at the sole risk of the Contractor. This in

no way restricts the right to increase the ceiling contract amount or change the performance period by mutual consent of both parties.

- 4. Availability of Funds.** It is understood and agreed between the parties herein that the Board shall be bound hereunder only to the extent of the availability of WIOA funds for the purpose of this contract. The CEO of the Board, through written notice, may terminate the contract without penalty at the discretion of the Board in the event that the Board determines such termination is necessary or advisable due to the level of WIOA funds available. Changes in funds allocated to the Board may also result in modifications of this contract being required under the “Changes” clause of this document.
- 5. Probationary Terms.** The Board, during the monthly, quarterly, or annual review of performance and outcomes of the Contractor, has the right to place the Contractor on probationary status at any time, including but are not limited to, the right to implement additional performance metrics for the duration of the probationary period. If any time during the probationary period the Board determines, in its sole and absolute discretion, that the Contractor is not performing up to contract standards, the Board, may terminate the Contract. At least thirty (30) days-notice will be provided to the Contractor of the termination and initiation of procurement.
- 6. Payments for Expenditures.**
  - a.** No payment shall be due the Contractor for work performed prior to the effective date nor after the termination date of the contract. Reimbursement Contractors will be reimbursed for allowable actual expenditures, provided such expenditures are consistent with the budget submitted by the Contractor and approved by the Board in connection with the awarding of the contract, and further provided that the total actual expenditures do not exceed the contract-ceiling price. The Contractor must submit expenditure reports at least on a monthly basis by the 15<sup>th</sup> calendar day of the subsequent month, and may report semi-monthly on a schedule determined by the Board.
  - b.** Regardless of whether the Contractor operates its accounting records on a cash or accrual basis, the Contractor must report its expenditures on both a cash and fully accrual basis in compliance with Generally Accepted Accounting Principles (GAAP). The Contractor must also review its obligations on an at least monthly basis with program operations staff and report its obligations on an at least monthly basis to the Board by the 15<sup>th</sup> calendar day of the subsequent month to the Board.
  - c.** The contractor shall follow the Board process for tracking funding requests and obligating/deobligating funds in a timely manner. Funding should not be obligated more than 30 days before the start of a class.
  - d.** The contractor shall follow the Board process and procedures for issuing Individual Training Accounts (ITAs), verifying attendance, and processing payments to training providers.
  - e.** As a subrecipient of federal grant funds, the Contractor must comply with requirements of the Cash Management Improvement Act (CMIA) agreement between the Commonwealth of Virginia and the United States Department of the Treasury.
  - f.** Payment for services provided under this contract shall be on a cost reimbursement basis only. It is understood by the Contractor that, although the Board makes every effort to pay its Contractors on a timely basis, delays in the receipt of the necessary funds from the VCCS occasionally occur. The Contractor must make provisions for these circumstances by

maintaining the cash reserve, or line of credit, necessary to maintain program operations if a payment is delayed.

- g.** At the end of the contract period, the Contractor will be required to close the contract with the Board; the Board will send a closeout package and instructions to the Contractor once the contract ends. During the closeout process, the Contractor must be able to provide documentation for all direct and indirect costs that are incurred. If an organization is claiming indirect costs, the documentation that is required is a final Negotiated Indirect Cost Rate Agreement or Cost Allocation Plan issued by the grantee's Federal cognizant agency. Documentation for those approved to utilize a de minimis rate for indirect costs must be demonstrated through the contract. Not having documentation for direct or indirect costs will result in costs being disallowed and subject to debt collection.
- h.** Please note that the Contractor is required to have an accounting software system in place that produces a trial balance, balance sheet, and income statement and must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of this contract.
- i.** The Contractor is required to have a financial management system that identifies adequately the source and application of funds for federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.
- j.** The Contractor must establish and maintain effective internal control over the contract that provides reasonable assurance that the Contractor is managing the contract in compliance with Federal statutes, regulations, and the terms and conditions of the contract. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO)

**7. Accountability for Funds.** The Contractor agrees to receive, administer, disburse and account for WIOA funds and such property as may be acquired, or placed under its control in accordance with all applicable local, state, and federal requirements. The Contractor will be accountable for the expenditure of said funds for disallowed costs. The Board will notify the VCCS of any possibility of disallowed costs incurred by its Contractors/subcontractors. In the event the Board finds that disallowed costs have been incurred and repayment from the Contractor is required and the Contractor does not timely object to such finding, the Board shall pursue cash repayment or may, with the consent of the VCCS, off-set the disallowed cost with other, allowable costs. The Board will not forgo collection without the written approval of VCCS. Repayment by the Contractor will not be by, or from, federal funds.

**8. Changes.**

- a.** The Board reserves the right to unilaterally de-obligate, modify, or amend the Contractor's budget consistent with the Board's actual funding and overall expenditures or based upon the Contractor's expenditures and/or obligations. The Board will notify the Contractor in writing of any de-obligation, modification, or amendment to the budget or to any addendum or prior

modification hereto, which modification or amendment shall be effective the date the Board gives notice thereof. Moreover, the Board reserves the right to suspend or terminate this contract or any addendum thereto without advance notice in the event that the Board deems, in its sole discretion, that such suspension or termination is necessitated by the Board's funding levels and overall expenditures within such funding levels to ensure that the funding level for all contracts is not exceeded or that the funding is fully expended by its expiration date. In the event of a suspension or termination, allowable costs will be reimbursed only up to the date of such suspension or termination; thereafter, neither the Board nor the Contractor shall have any obligations whatsoever to complete or to otherwise continue the program; provided, however, that the parties shall be responsible for the completion of closeout and audit activities described herein and any allowable costs of the Contractor relating thereto shall be reimbursable.

- b. The Board through its CEO may at any time, by written order and without prior notice to the Contractor, make changes to the services to be provided within the general scope of this contract. If any such change causes an increase or decrease in the cost of or time required for the performance of any part of the services under this contract, whether changed or unchanged by the change order, an equitable adjustment will be proposed by the Board and, unless the Contractor timely objects to the proposed adjustment, the contract shall be deemed to be modified in accordance with such adjustment. Any objection by the Contractor to the proposed equitable adjustment under this clause must be asserted by giving the Board written notice thereof within 30 days from the date of receipt of the notification of change. Such objection will be treated as a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause will excuse the Contractor from proceeding with the contract as changed pending the resolution of the dispute.
- c. The Contractor may recommend to the Board CEO revisions to the contract. When the Contractor desires to recommend revisions to the CEO, the recommendation shall be submitted in writing with complete justification for the recommended change. If such change requires a budget adjustment, the Contractor shall submit the applicable revised budget page(s) with the recommendation. No modification to the contract may be implemented until the CEO approves such modification. The Board reserves the right to decide, on a case-by-case basis, at its sole discretion, whether to accept or reject the recommended revisions.

**9. Stop Work/Suspension of Performance.** The CEO may issue a stop performance notice at any time. The Contractor, upon receipt of such written notice, will immediately stop performance on the date specified in the notice and incur no further costs and will not undertake any further performance until directed to do so in writing by the CEO. Unless such direction is received, any costs incurred or work performed by the Contractor after receipt of a stop performance notice is at the sole risk of the Contractor and shall not be reimbursed unless later authorized by the Board, for good cause, as determined in the Board's sole discretion. Under no circumstances shall a stop performance notice be used to terminate a contract. In any case where it is determined that performance shall not be permitted to be resumed a formal termination notice will be issued.

**10. Termination for Convenience.**

- a. The performance of work under this contract may be terminated, in whole or in part, whenever for any reason the CEO determines that such termination is in the best interest of the Board. Termination of work hereunder shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance or work under the contract is terminated and the date upon which such termination becomes effective. In no event shall a termination for convenience be effective in less than thirty (30) calendar days after receipt of notice thereof.
- b. After receipt of the Notice of Termination, the Contractor shall cancel outstanding commitments covering the procurement or rental of materials, supplies, equipment, and miscellaneous items. In addition, the Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of outstanding commitments covering participant services that extend beyond the date of such termination to the extent that they relate to the performance of any work terminated by the notice. With respect to such cancelled commitments, the Contractor agrees to each of the following:
  - 1) Settle all outstanding liabilities and all claims arising out of such cancellation of commitments. The CEO must approve or ratify all such settlements. The CEO's approval of such settlements shall be final for all purposes of this clause.
  - 2) Assign to the Board in the manner, at the time, and to the extent directed by the CEO, all of the rights, title, and interest of the Contractor under the orders and subcontractors so terminated. At its discretion, the Shenandoah Valley Workforce Development Board shall have the right to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

**11. Termination for Default.** Should the Contractor default in the performance of any of its obligations under this contract as determined by the Board, the CEO on behalf of the Board may at its option take any or all of the following actions:

- a. Seek specific performance of this contract by the Contractor.
- b. Terminate this contract after written notice to the Contractor of the default and of the effective date of such termination, which shall be no less than thirty (30) days, unless the Board determines, in its sole discretion, that the default has been cured by the Contractor prior to the effective date of the termination or a corrective action plan satisfactory to the Board, in its sole discretion, is agreed to and signed by the Contractor prior to the effective date of the termination.
- c. If the default of the Contractor involves fraud, misrepresentation, criminal acts, misappropriation of funds, failure to comply with applicable law in connection with the default, or failure to comply with the terms of a corrective action plan, then the Board may terminate this contract immediately by written notice to the Contractor.
- d. Disqualify the Contractor from the award of contract under future RFPs of the Board for such period and under such conditions for requalification as may be determined by the Board.
- e. Seek recovery of any monetary damages sustained as a result of the default.
- f. Withhold payment for invoices properly submitted to the Board until such time that a determination is made on the acceptability of the Contractor's corrective action plan relative to the default.
- g. Procure services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs.

- h. Seek any other remedy that may be available at law, in equity, or under this contract.

In the event of such termination, the Contractor will be paid to the date of termination for such work as has been properly performed hereunder in accordance with the payment provisions. Should it finally be determined by the Board or by a court of competent jurisdiction that the Contractor has in fact performed properly and was not in default, the parties agree that the termination will be treated as a termination for convenience.

## **12. Disputes**

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

- 13. Notice.** Any notice requested, demanded, required or permitted hereunder by either party to the other shall be effected either by personal delivery in writing or by U.S. mail, courier service, or telecopier with applicable verification of date and time initiated, and delivered to the last registered address of either party and such notice will be deemed to be legally effective irrespective of any change in location of Contractor. Notices delivered personally shall be deemed communicated as of actual receipt. Mailed notices shall be deemed communicated as of three (3) days after mailing or verified receipt whichever is earlier.

- 14. Eligibility Certification.** The Contractor has the responsibility for eligibility certification of all participants in this contract. The Contractor will maintain records documenting this eligibility and these records are subject to review by Board staff, and other governing authorities. Funds expended for the direct cost of services for ineligible participants are subject to repayment and are the sole responsibility of the Contractor.

**15. Required Participant Activities.** The Contractor has the responsibility for all Federal and State WIOA requirements as well as the Board's requirements concerning participant development and activities. If the Contractor does not develop and work with the participant on the required activities, the participant and associated costs may be subject to repayment and are the sole responsibility of the Contractor.

**16. EEO and Nondiscrimination.**

- a. This contract is subject to and the Contractor shall comply with the provisions contained in WIOA Section 188, Title VI and Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000 et.seq.) as amended by the Equal Opportunity Act of 1974 (42 U.S.C. 2000e), the Age Discrimination in Employment Act (29 U.S.C. 620 et.seq.), the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et. seq.) the Rehabilitation Act (29 U.S.C. 794 et.seq.), the Drug Abuse Office and Treatment Act of 1975 as amended (P.L. 92-255), relating to nondiscrimination on the basis of drug abuse, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 as amended (P.L. 91-616), related to nondiscrimination on the basis of alcohol abuse or alcoholism, and the Education Amendments of 1972, Title IX, as amended (20 U.S.C. 1681 et. seq.). In undertaking to carry out its obligation under said Acts and Regulation(s), the Contractor specifically agrees that all work/training for which it receives Federal financial assistance through this contract will be carried out in such a manner that no one person involved in the work/training will be discriminated against in ways set forth in the Acts and Regulation(s) referred to above because of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), age, national origin (including limited English proficiency), disability, marital status, sexual orientation, political affiliations or beliefs, veterans status, or on the basis of any other classification protected by state or federal law. Contractors will document compliance with anti-discrimination laws and will make available to all employees and participants under this contract information regarding his or her obligations under this section in such form, and at such times as the Board may specify.
- b. The Contractor will also comply with the provisions of the Virginia Fair Employment Contracting Act and the Virginia Human Rights Act.
- c. The Contractor shall provide copies of the EEO/Non-Discrimination policy to all employees and participants; furthermore, the Contractor must document this conveyance of information and shall post the Board EEO notice in prominent locations, which are accessible to applicants for program services and/or funding, participants, employees, terminees and other interested parties.
- d. The Contractor will furnish all necessary books, records, accounts, etc. to the Board, the Commonwealth of Virginia, and any other regulatory agency for purposes of investigation to ascertain compliance with these provisions.

**17. Indemnification.** Unless prohibited by law from doing so, the Contractor agrees to indemnify, defend, and hold harmless the Board and its staff, the city and counties comprising Local Workforce Area IV as well as their respective officers, agents, and employees from any claims, damages, suits, actions, liabilities and costs of any kind or nature, including attorneys' fees, arising from or caused by the provision of any goods and/or services, the failure to provide any goods and/or services and/or the use

of any services and/or goods furnished (or made available) by the Contractor, provided that such liability is not attributable to an Indemnified Entity's sole negligence.

Notwithstanding anything to the contrary contained in the Contract, the indemnity and hold harmless provisions shall not apply to any school board, school division, local government, or other political subdivision of the Commonwealth of Virginia when any of these governmental units are the Contractor.

#### **18. Grievances or Complaints**

- a. **Discrimination:** All grievances or complaints of discrimination against the Board must be filed in accordance with the policies and procedures of the Shenandoah Valley Workforce Development Board.
- b. **Other:** The Contractor shall establish and maintain procedures to informally resolve grievances or complaints from participants in programs operated under this contract. The Contractor shall inform participants of such procedures (including their right to file grievances with the Board) and obtain written confirmation of their understanding of such procedures. Such grievances or complaints, if not satisfied through informal discussion with appropriate supervisors of Contractor, shall be filed in accordance with Contractor's established grievance procedures. Appeals to decision rendered shall be processed in accordance with the procedures of the Board.
- c. **Collective Bargaining:** In training facilities operating under a collective bargaining agreement, disciplinary and grievance procedures provided in such an agreement and applicable to participants under this contract shall govern.

#### **19. Adjustments in Payments**

- a. If any funds are expended by a Contractor or his subcontractor in violation of the Workforce Innovation and Opportunity Act regulations, the contract or conditions imposed by the CEO, the Board may make necessary adjustments in payments to the Contractor to recoup such expenditures.
- b. The CEO may take back unexpended funds, which have been available in order to assure that they will be used in accordance with the purposes of the Act or to prevent further disallowed, unauthorized, or illegal expenditures.

**20. Accounts Payable Liability.** Neither the Governor, the Commonwealth of Virginia, nor the Board assumes liability by virtue of this contract for any costs incurred above the amount provided pursuant to this contract or for costs incurred by the Contractor that are otherwise determined to be unallowable. Any such costs will be at the sole risk of the Contractor. The Contractor is responsible to ensure that all known outstanding financial obligations under the contract have been paid within fifteen (15) calendar days after the contract ending date. Upon expiration of this fifteen (15) calendar day period, the Board no longer has any liability for such costs, and they become the sole financial responsibility of the Contractor. Furthermore, any contract funds in the possession of the Contractor for these obligations revert to the control of the Board and must be returned to it immediately, unless specifically directed otherwise in writing by the CEO. In the event unusual circumstances indicate the Contractor may have difficulty satisfying such obligations within the specified time allotted, the CEO must be notified, in writing, within ten (10) calendar days after the contract ending date. Such notification shall in no way be construed as relieving the Contractor of stated responsibility and liability

after expiration of said 15-day period. The Contractor cannot use new fiscal year funds to pay any cost incurred in the prior fiscal year and not invoiced for, in compliance with requirements enumerated herein. Therefore, such costs become the sole financial responsibility of the Contractor. Any deviations from requirements of this clause must be approved, in writing, by the CEO to the Contractor.

**21. Refunds/Credits.** Refunds or credits from training institutions or other vendors for unearned funds or costs that have been paid by the Contractor and reimbursed by the Board, shall be returned to the Board within ten (10) days of being received by the Contractor or shall be accounted for in the following reimbursement request with a reduction equal to the refund or credit; any refunds or credits must be set forth discretely on the face of the invoice documentation.

**22. Allowable Costs**

- a. Funds granted under the Workforce Innovation and Opportunity Act may be expended only for purposes specified in this contract and only to the extent allowable under applicable law and regulations. Contractors shall maintain records that adequately document and verify all contract expenditures.
- b. The program activities against which program costs shall be allocated, controlled, and reported are as directed in applicable regulations. Contractors shall maintain records that adequately document and verify allocation of cost.
- c. Funds may not be used to purchase real property or equipment or to construct buildings without prior written approval from the Board CEO and the VCCS.
- d. Training expenditures for participants may only be paid to the training institution/provider subsequent to the intuitions' course drop date.

**23. Reporting Requirements in General.** Each Contractor shall submit periodic fiscal and programmatic reports as required by the Board. Other required information shall be submitted no later than the date specified at the time of request; late submission of reports without the written agreement of the CEO (or duly authorized representative) may be considered a breach under this contract and may be cause for Termination of this contract for default, as provided in the General Provision entitled "Termination for Default".

**24. Format of Participant Records.** Each Contractor shall organize participant records in the format promulgated by the VCCS. The VCCS has provided specific guidance on the preparation and maintenance of both paper and electronic participant files and the proper labeling and order of documents in participant folders on Virginia Career Works website.

**25. Retention and Transfer of Records.**

- a. Records shall be retained for a period of four (4) years following the date of the submission of the contract closeout package except as provided in (b) below. Both participant and financial records must be maintained in a secured locked file cabinet or other secured arrangement in compliance with VWL 19-05.
- b. All records will be retained beyond the four years if any litigation or audit is begun or if a claim is instituted involving the grant or agreement covered by the records. In these instances, the records will be retained until the litigation, audit, or claim has been finally resolved.
- c. Upon the assumption of program operations by another Contractor, the Contractor and Board staff shall make arrangements to transfer all participant records to the new Contractor. This

transfer process will be coordinated by Board staff no later than one week before assumption of program activities by the new Contractor. The former Contractor shall provide these records divided by contract, in alpha order by last name, properly labeled, and in an adequate condition for storage. The Contractor shall provide a list of active and inactive participants and provide a written explanation of any missing records and of any other issues that may be present. The list(s) will be provided and a chain of custody document will be completed at the time of the records transfer, in accordance with procedures promulgated by the Board.

**26. Court Actions; Attorney's Fees.**

- a. The Contractor agrees to give the Board immediate notice in writing of any action or suits filed and prompt notice of any claims made against the Contractor or any of the parties involved in the implementation and administration of the WIOA program.
- b. The Contractor shall, at its own expense, indemnify, protect and defend the Board from all claims, damages, costs, lawsuits, and expenses, including, but not limited to, all costs from administrative proceedings, court costs, and reasonable attorney fees, that the Board may incur as a result of any negligent act or omission, or any other conduct or misconduct, of the Contractor, its subcontractor, employees, participants, agents or servants.
- c. The Contractor further acknowledges and agrees that, in addition to any other remedies at law in equity, or pursuant to this contract, it shall be liable for any damages, including any costs and expenses of suit and reasonable attorney's fees, sustained by the Board by virtue of any breach by the Contractor of this contract.
- d. Should the Board be obligated to retain counsel, or to initiate litigation in order to enforce any term, provision, or undertaking hereunder, or to remedy any breach or default thereof, the Board therein shall be entitled to reimbursement of all reasonable attorney's fees and costs incurred, whether suit be brought or otherwise, and through all trials and appellate levels.

**27. Subcontract and Assignment.** The Contractor may enter into subcontracts as determined necessary to properly complete performance, provided that written permission is obtained from the CEO. The CEO shall determine that the subcontract or assignment is in the best interest of the Board. The Contractor shall provide written confirmation to the CEO that the subcontractor is not on the List of Debarred/Suspended Persons or Firms, and that all mandatory provisions and procedural policies contained in this contract are incorporated into any subcontract. The Contractor shall select subcontractors on a competitive basis to the maximum practical extent consistent with the objectives and requirements of this contract.

**28. Inspections and Right of Access.**

- a. All Contractor operations incident to performance under this contract shall be subject to inspection by the Board, the VCCS, the Governor of Virginia, the U.S. Secretary of Labor, the Comptroller General of the United States, the Government Accountability Office, the Office of the Inspector General, or any of their duly authorized representatives. They shall have access to work and training sites and to any books, documents, papers, and records (including electronic records) of the Contractor which are directly pertinent to this contract, in order to conduct audits, compliance monitoring and examinations and to make excerpts, transcripts, and photocopies, to the extent reasonable and practical, at all times and places, during the contract period. Contractors shall make their income tax return available for inspection upon

request unless otherwise exempt from such disclosure by applicable law or regulation. This right to inspection includes timely and reasonable access to the personnel for the purpose of interviews and discussions related to such documents. The right of access is not limited to the required retention period (four years) but will last as long as the records are maintained. Instances of Contractor noncompliance with the requirements of this contract shall be promptly corrected. Failure to correct these discrepancies promptly is cause for Termination of this contract for default, as provided in General Provision entitled "Termination for Default."

- b. The inspections by the CEO (or duly authorized representative) do not relieve the Contractor from any responsibility for failure to meet contract requirements that may be discovered at a later date.

**29. Compliance Monitoring.** The Board has established and adheres to an appropriate system for the award and monitoring of grants and contracts with sub-grantees and Contractors that contains acceptable standards for ensuring accountability. The monitoring will consist of programmatic, administrative, and fiscal reviews; monitoring will be both scheduled and unscheduled. Monitoring requirements include but are not limited to:

- a. Compliance with WIOA, federal regulations (including Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), state and Board policies and procedures. This includes appropriate reviews of procurement, performance, and resolution of audit findings including those of subrecipients in addition to other areas for review (20 CFR Section 667.410(a) (1) and (2)).
- b. Compliance with the terms of this contract.
- c. Expenditures: On-site reviews of financial records and source documents, i.e., invoices, receipts, vouchers, cancelled checks, timesheets, etc.
- d. Eligibility: On-site reviews of programmatic records, i.e., participant files including paper and electronic case management files, eligibility, and supportive services documentation.
- e. Reviewing reports submitted by the Contractor including financial and performance data.
- f. Interviews with the contract signatory or designated representative, program operations staff and participants.
- g. Reviews of the Contractor's applicable written policies and procedures and their adherence thereto.

The Contractor must provide the Board with a written response to the monitoring report, accompanied by appropriate supporting documentation, which addresses the disposition of all questioned costs and costs recommended for disallowance, related to funds covered by the Contract. The Contractor will provide a written explanation of any corrective actions taken or a plan for future corrective action to address findings resulting from the monitoring. Documentation to verify that corrective action has been taken or a timetable for the completion of the corrective action shall be included with the explanation. The Board CEO shall determine the adequacy of the action taken to resolve the findings. The Board may request additional action on any finding considered not fully resolved, and the Contractor shall submit the necessary documentation to fully resolve the finding. A determination will be issued based on an evaluation of the corrective action plan. The determination will: (a) list any costs which have been determined unallowable; and (b) as necessary, establish a liability for any disallowed costs and designate a date by which repayment must be made. The Board reserves the right to undertake monitoring through additional means to ensure compliance with Federal statutes, regulations, and terms and conditions of funds received under this contract.

**30. Audit.**

- a. Organization-wide or program-specific audits shall be performed in accordance with Subpart F, the Audit Requirements of the Uniform Guidance which apply to audits for fiscal years beginning on or after December 26, 2014. Contractors including for-profit and foreign entities that expend \$750,000 or more in a year from any Federal awards must have an audit conducted for that year in accordance with the requirements contained in 2 CFR 200.501. DOL's approved exception at 2 CFR 2900.2 expands the definition of 'non-Federal entity' to include for-profit entities and foreign entities. For-profit and foreign entities that are recipients or subrecipients of a DOL award must adhere to the Uniform Guidance at 2 CFR 200. The Contractor shall ensure that a copy of the audit report is provided to the Board within 30 days after its receipt by the Contractor but no later than 9 months after the end of the date of the contract. The Board, VCCS, and the Virginia Auditor of Public Accounts will determine the acceptability of the audit reports.
- b. Expenditure reimbursement vouchers transactions by all Contractors may be selected for verification in the course of the Board's annual independent financial statement audit.
- c. Contractors procuring their own audit will ensure that the auditor, immediately and in writing, notifies the Board of possible acts of fraud discovered during the performance of the audit.
- d. The Contractor will provide the Board with written documentation of the disposition of all questioned costs and administrative finds in the audit. The disposition must detail actions taken and include appropriate supporting documentation. A determination of allowing of questioned costs will not be deemed final until accepted by the VCCS.

**31. Liability Clause.** The Board has no liability with respect to bodily injury, illness or any other damages or losses to person or property or claims in respect to any such injury, illness, damages or losses whether concerning persons or property in the Contractor's organization or third parties unless directly caused by the direct and negligent acts of the Board. The Contractor shall obtain a public general liability insurance policy with appropriate coverage as specified by the Board. Premiums for the insurance shall be paid by the Contractor.

**32. Contractor Financial Liability.** The Contractor shall be held liable for any disallowed cost incurred as a result of a participant being found ineligible or for any other cause specified under applicable laws, regulations, policies or the contract. The Contractor shall immediately reimburse the Board for any cost disallowed, in writing, by the CEO. In the event of a dispute resulting in an appeal, the Contractor, with the exception of units of state or local government, may be required by the Board, in the Board's discretion, to pay the questioned amount to the Board pending a final decision, and such payment shall be made within 30 days from date of receipt of the CEO's decision disallowing the questioned cost. Any appeal of a disallowed cost shall be submitted in accordance with the procedure set forth in Section 12 for disputes over questions of fact.

**33. Allowable Costs.** The Contractor must follow applicable OMB cost principles, ETA grant regulations, and the terms of the contract must be followed in determining the reasonableness, allowability, and allocability of costs. Only allowable costs should be charged to the contract, and the contract shall not pay for more than its fair share of the costs (allocability). This means that the Contractor must determine what costs incurred by the organization are reasonable and allowable, following the

guidelines specified, and allocate those costs to the proper funding source based on the activity involved. To determine the allowability of a cost, it must meet the seven guiding factors found in the Uniform Guidance at 2 CFR 200.403:

- a. Be necessary and reasonable for the performance of the contract and be allocable thereto under these principles.
- b. Conform to any limitations or exclusions set forth in these principles or in the contract as to types or amount of cost items.
- c. Be consistent with principles and procedures that apply uniformly to both federally-financed and other activities of the organization.
- d. Be accorded consistent treatment.
- e. Be determined in accordance with GAAP.
- f. Not to be included as a cost or used to meet cost-sharing or matching requirements of any other federally-financed program in either the current or a prior period.
- g. Be adequately documented.
- h. Free of conflict of interest per the Board's conflict of interest policy (OP 15-03).

**34. Disallowed Costs.** The Contractor shall provide the Board immediate, advance notice of the possibility of disallowed costs being incurred. The Board may seek guidance from VCCS or the USDOL. In the event that repayment is required, the Contractor shall repay disallowed costs promptly in accordance with the preceding section.

- a. False submissions and Disallowed Costs:
  - 1) The production, or submittal, of any records, or reports, containing any false information, with the intent to defraud or deceive the Board, shall be considered as constituting a fraudulent act in violation of Federal and State law and shall result in the immediate termination of this contract. Any such incident of submittal of such false information shall be reported to the VCCS and any other local and State authorities having proper jurisdiction. The Contractor shall be liable for the repayment of any and all funds that were paid by the Board, directly or indirectly related to such fraudulent act by the Contractor, for reported performance or other compensation for services or expenses subsequently determined to be fraudulent and invalid. Repayment shall be by deduction from subsequent invoices and/or in the form of a check for the total amount, or balance due as determined by the Board.
  - 2) All Board funds paid to the Contractor as compensation for services or expenses determined not to be in accordance with the WIOA, applicable regulations, or this contract, shall be a disallowed cost. The Contractor shall repay to the Board any amounts determined not to have been expended in accordance with the WIOA, applicable regulations, or this contract, or disallowed in the final resolution of an audit report.
  - 3) The Contractor agrees that in the event it, or any of its agents or employees, makes any unauthorized or disallowed distribution of funds for any reason whatsoever, the Contractor shall be responsible for said sums and shall be liable for the repayment of such funds to the Board upon demand.
  - 4) All funds repaid to the Board based on fraudulent or disallowed costs shall be paid from funds other than funds received pursuant to the WIOA, this contract, or from other

Federal funds. The Board may, in its sole discretion, withhold funds due pursuant to this contract pending resolution of such disallowed or fraudulent costs.

- 35. Requirements for Conference and Conference Space.** Conferences sponsored in whole or in part by the Contractor are allowable if the conference is necessary and reasonable for the successful performance of the contract. The Contractor must use discretion and good judgment to ensure that all conference costs charged to the contract are appropriate and allowable. For more information on the requirements and the allowability of costs associated with conferences, refer to 2 CFR 200.432. The Contractor will be held accountable to the requirements in 2 CFR 200.432. Therefore, costs that do not comply with 2 CFR 200.432 will be questioned and may be disallowed.
- 36. Compensation and Bonus Limitations.** Public Law 113-6 (Division F, Title I, sections 1101 (a)(4), I 102), 112-74 (Division F, Title I, section 105) and TEGL 05-06 restrict the Contractor's salary compensation and bonus limitations of an individual, either directly or indirectly funded through this contract, at a rate in excess of Executive Level II. The Executive Level II salary may change yearly and is located on the OPM.gov website (<http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2016/executive-senior-level>).
- 37. Option to Extend the Term of Contract.** This contract is renewable at the option of the Board by the CEO giving written notice to the Contractor prior to the expiration of the current contract performance period, provided that the CEO shall have given preliminary notice of the Board's intention to renew at least 15 days before expiration of the performance period. However, such preliminary notice shall not be deemed to commit the Shenandoah Valley Workforce Development Board to renewal. If the Board exercises this option for renewal, the contract as renewed shall be deemed to include this option provision. The renewal period will be specified, and the exercise of any option shall not exceed 12 months.
- 38. Procurement.** All procurement of property and services under this contract shall be in accordance with 2 CFR 200.316 -326 and the provisions of the Virginia Public Procurement Act. The Contractor agrees to abide by these and all present or future rules and regulations imposed by the WIOA, the VCCS, and the Board. The Contractor must use its own documented procurement procedures which reflect applicable Federal, state and local laws and regulations, provided that procurements conform to applicable Federal law and the standards identified in 2 CFR 200.318.
- 39. Program Income.** The Contractor shall hold all funds in an insured interest-bearing bank account; all interest earned shall be considered program income. The "Addition" method as described in 2 CFR 200.307 must be used in allocating any program income generated for this contract. The Contractor must expend all program income prior to requesting additional funds as required at 2 CFR 200.305(b) (5) and 2 CFR 200.307(e). Any program income found remaining at the end of the contract must be returned to the Board. In addition, The Contractor must report program income monthly to the Board by the 15<sup>th</sup> calendar day of the subsequent month.
- 40. Publicity.** No funds provided under this contract shall be used for publicity or propaganda purposes, for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before the Congress or any state or

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

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

**42. Standards of Conduct and Nepotism.**

- a. The Contractor hereby agrees that in administering this sub-grant, they will comply with the standards of conduct, hereinafter specified, for maintaining the integrity of the project and avoiding any conflict of interest in their administration.
- b. No individual may be enrolled as a participant funded under this contract, if a member of that person's immediate family is directly supervised by, or directly supervises that individual.
- c. No relatives by blood, adoption, or marriage of any executive or employee of the Contractor or service provider will receive favorable treatment for enrollment into services by, or employment with, the Contractor or service provider. When it is in the public interest for the Contractor or service provider to conduct business (only for the purpose of services to be provided) with a relative, the service provider will obtain written approval from the Board CEO before entering into an agreement. All correspondence will be kept on file and available for monitoring and audit reviews.
- d. Every reasonable course of action will be taken by the Contractor in order to maintain the integrity of the expenditure of public funds and to avoid any favoritism or questionable or improper conduct. This contract will be administered in an impartial manner, free from personal, financial, or political gain. The Contractor, their executive staff and employees, in administering this contract, will seek to avoid situations that give rise to a suggestion that any decision was influenced by prejudice, bias, special interest, or personal gain.
- e. The Contractor will exercise due diligence to avoid situations which may give rise to an assertion or the appearance that favorable treatment is being granted to friends and

associates. When it is in the public interest, is consistent with the objectives of the WIOA, and is not otherwise in violation of any applicable requirements of law, or contract, for the Contractor to conduct business with a friend or associate of an executive or employee of the Contractor, such business may be conducted with such person, provided that detailed documentation of any such business transactions are maintained in the records of the Contractor, as required by this contract.

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

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

**44. Immigration Reform and Control Act of 1986.** By signing this contract, the Contractor certifies that it does not and will not, during the performance of this contract, employ alien workers who are not eligible to work in the United States, or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986.

**45. Contract Performance.** The performance of the Contractor shall, in addition to planned performance versus actual performance, be gauged by those performance standards established for Workforce Innovation and Opportunity Act Programs for the period of this agreement. In addition to statistical data, the Contractor shall provide Board staff with contact information and access to participants for purposes of conducting interviews to collect performance information. The Board may monitor and evaluate the Contractor's performance under the contract through analysis of required reports, expenditure statements, site visits, interviews with or surveys of relevant agencies/organizations and individuals having knowledge of the Contractor's services or operations, audit reports and other mechanisms deemed appropriate by Board. Performance under this contract may be a consideration in future contracts and negotiations. It is understood by the parties to this contract that the Board, or its designee, shall:

- a. Determine whether or not the performance of the Contractor is satisfactory,
- b. Interpret all reports and decide the acceptability and/or progress of services provided,
- c. Decide the amount, classification, and quality of services provided and amounts to be paid, and
- d. Determine the validity and acceptability of any claims for payment made by the Contractor.

**46. Assignment of Contract.** This contract is not to be assignable to another entity, in whole or in part, without the written consent of the CEO.

**47. Subaward.** A subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement

that the pass-through entity considers a contract. As a subaward, the provisions contained within this contract must be applied to any subrecipient under this contract. The Contractor will be responsible for monitoring the subrecipient, ensuring that the Terms and Conditions are in all subaward packages and that the subrecipient complies with all applicable regulations and the terms and conditions of this contract (2 CFR 200.101(b)(1)).

**48. Conflict of Interest.**

- a. No officer, or employee, of the Contractor will solicit or accept money or any other consideration from a third person or entity for the performance of service contained in this contract. The Contractor will administer this contract in a manner that maintains the integrity of the program and avoids any conflict of interest.
- b. The Contractor represents to the Board that by entering into this agreement with the Board, the Contractor will not be in violation of the Virginia Conflict of Interest Act. The Contractor and any of its subcontractors shall review Section 2.2-3100 of the Code of Virginia and other pertinent provisions of state and federal law and regulations.
- c. The Contractor must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts as specified in 2 CFR 200.318. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Contractor.

**49. Property Management.**

- a. The Contractor assumes responsibility for inventory control, maintenance, insurance, and the physical security of non-expendable Board property placed in its possession. Per Board policy, any property valued at \$500, or more, must be listed on an inventory record and tagged as Board property. Property cannot be cannibalized, traded in, relocated, or disposed of in any manner without prior approval by the Board. Any loss, or theft, of such property will be reported to local police. The loss shall also be reported to the Board, with details identifying the property and a copy of the police report.
- b. Tagged property will revert to the Board upon termination of contractual services. The property may, however, be reissued to the same, or a different Contractor.
- c. The Contractor shall review and deliver, within thirty (30) days of receipt, fully executed Close-Out Package documents (including, but not limited to: Close-out Package Summary Sheet; Contractor Assignment of Refunds, Rebate and Credits; Contractor Release; contract Close-out Tax Certification; and Non-Expendable Property Listing).
- d. Such reports and records shall become the property of the Board without restriction, reservation, or limitation of usage. Such reports and records are subject to Virginia Statutes, and shall be retained by the Contractor as required thereunder, but in no instance shall such records and reports be disposed of within four (4) years after the date of termination of this contract, or of an audit of the Contractor, whichever occurs later.
- e. Should the Contractor plan to dissolve its legal status as a business entity, it shall provide the Board thirty (30) days written notice prior to such occurrence; if involuntary dissolution occurs, the Contractor shall designate an acceptable custodian of records and inform the Board of the location of any and all reports and records regarding activities funded under this contract. The Contractor shall transfer to the Board or its designee all records and reports regarding WIOA

activities funded under this contract upon demand by the Board. Such records shall be transmitted in an acceptable condition for storage.

- f. The purchase or rental of non-expendable property with a per unit cost of \$5,000 or more must be approved in advance, in writing, by the CEO and the VCCS. Approval of a budget containing an equipment cost line item does not constitute prior approval to purchase. Non-expendable property purchases will be made in a manner to encourage competition and thus minimize costs.
- g. The Contractor shall not make any repairs, alterations, or improvements to the Virginia Career Works centers without the prior written consent of the Board CEO. The Contractor shall be liable for any damage to the Virginia Career Works Center and any disruption of the activities of Board at the Virginia Career Works Center that is caused by the Contractor, its officers, directors, agents, employees, subcontractors or other representatives.
- h. Intangible Property:
  - 1) Inventions and Patents – The Contractor will promptly inform the Board of any program which produces patentable items, patent rights or inventions. Unless agreed to previously, the Board will determine whether protection for an invention or discovery shall be sought and how such rights should be allocated.
  - 2) Copyrights – The Federal Government reserves a paid-up, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for federal purposes: i) the copyright in all products developed under the grant, including a subgrant or contract under the grant or subgrant; and ii) any rights of copyright to which the recipient, subrecipient or a contractor purchases ownership under an award (including but not limited to curricula, training models, technical assistance products, and any related materials). Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise. Federal funds may not be used to pay any royalty or license fee for use of a copyrighted work, or the cost of acquiring by purchase a copyright in a work, where the Department has a license or rights of free use in such work, although they may be used to pay costs for obtaining a copy which is limited to the developer/seller costs of copying and shipping. If revenues are generated through selling products developed with grant funds, including intellectual property, these revenues are program income. Program income must be used in accordance with the provisions of this contract and 2 CFR 200.307
- i. Title to Property Acquired or Materials Developed. Title to all property furnished by the Board will remain with the Board unless or until such title is specifically relinquished in writing by the Board. Title to all property, materials, and supplies purchased by the Contractor for which the Contractor is reimbursed as a direct item of cost will pass to and vest in the Board. Property and materials developed, the cost of which is reimbursable to the Contractor under this contract, will pass to and vest in the Board. If applicable, the following needs to be on all products developed in whole or in part with grant funds:

***“This workforce product was funded by a grant awarded by the U.S. Department of Labor’s Employment and Training Administration. The product was created by the recipient and does not necessarily reflect the official position of the U.S. Department of Labor. The Department of Labor makes no guarantees, warranties, or assurances of any kind, express or implied, with respect to such information, including any information on***

*linked sites and including, but not limited to, accuracy of the information or its completeness, timeliness, usefulness, adequacy, continued availability, or ownership. This product is copyrighted by the institution that created it.”*

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

**50. Contractor Employees:** The Contractor shall provide a list of employees and their job title to the Board CEO that will be located in the Board’s leased Virginia Career Works locations or those who will have access to the premises. Changes, including but not limited to, staffing changes, job title changes, relocations of staff, or other applicable changes, to this listing will be communicated in writing to the Board CEO (or their duly authorized representative) within five business days of the related change.

**51. Marketing and Program Materials.** All marketing, outreach, advertising, or other types of promotion of programs funded under this contract must adhere to graphic standards issued by the Board and receive approval by Board staff prior to dissemination. This provision applies to print, electronic or other information dissemination methods regardless if conducted solely by the Contractor or in coordination or partnership with other entities or funding streams.

**52. Personally Identifiable Information.** The Contractor must recognize and safeguard personally identifiable information (PII) except where disclosure is allowed by prior written approval of the Grant Officer or by court order. The Contractor must meet the requirements in Training and Employment Guidance Letter (TEGL) 39-11, Guidance on the Handling and Protection of Personally Identifiable Information (PII)), found at [http://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=7872](http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7872) and Virginia Workforce Letter (VWL) 19-05.

**53. Veteran’s Priority of Service.** The provisions of the Jobs for Veterans Act (JVA), Pub.L. 107-288 (38 U.S.C. 4215) require grantees to provide priority of service for veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by DOL. The regulations implementing this priority of service can be found at 20 CFR Part 1010. In circumstances where a grant recipient must choose between two qualified candidates for a service, one of whom is a veteran or eligible spouse, the veteran’s priority of service provisions require that the grant recipient give the veteran or eligible spouse priority of service by first providing him or her that service. To obtain priority of service, a veteran or spouse must meet the program’s eligibility requirements. Grantees must comply with DOL guidance on veterans’ priority. ETA’s Training and Employment Guidance Letter (TEGL) No. 10-09 (issued November 10, 2009) provides guidance on implementing priority of service for veterans and eligible spouses in all qualified job training programs funded in whole or in part by DOL. TEGL No.10-09 is available at <http://wdr.doleta.gov/directives/attach/TEGL/TEGL10-09acc.pdf>.

**54. Travel – Mileage Reimbursement Rates.** Pursuant to 2 CFR 200.474(a), the Contractor must have policies and procedures in place related to travel costs; however, for reimbursement on a mileage basis, this contract cannot be charged more than the maximum allowable mileage reimbursement rates

for Federal employees. Mileage rates must be checked annually at [www.gsa.gov/mileage](http://www.gsa.gov/mileage) to ensure compliance.

- 55. Confidentiality.** The Contractor shall not divulge any information regarding applicants, participants, or their families without the written permission of the applicant or participant and only to the extent permitted by law. Participant information may be divulged for purposes of contract performance evaluation and to those responsible for monitoring this contract, Board staff, or to governmental authorities, to the extent necessary for proper administration of the law.
- a. The Contractor will refer to the Board all requests by members of the public for records produced under this contract. Board staff may require the Contractor to release the names of all participants in programs under this contract and the names of all individuals employed in staff positions and/or make available to the public other information regarding applicants, participants, or their families, which may be obtained through application forms, interviews, tests, reports from public agencies or counselors, or any other source.
  - b. The Contractor will not otherwise divulge such information without permission of the applicant or participant, except that information which is necessary for purposes related to the performance or evaluation of the contract may be divulged to parties having responsibilities under the contract for monitoring or evaluating the services and performances of the contract, to the Board Staff Representative (or duly-authorized representative), or to governmental authorities to the extent necessary for proper administration of the law.
  - c. Any breach of confidentiality regardless of extent must be reported to the Board within 24 hours of the occurrence. The Contractor shall provide as many details as possible, including the nature of the breach and the identities of participants affected. Any requests for documents under the Freedom of Information Act or other legal or jurisdictional requirement should be forwarded to the Board. The Board is solely responsible for providing the information to the interested party.
- 56. Contractor Professional Conduct.** The Contractor agrees that it will not, by act of commission or omission, do or fail to do any act that would hinder, frustrate, or delay the performance of this contract or any act or duty required. The Board has a proprietary interest in maintaining its reputation as a professional organization administering employment training services. This reputation, which extends not only to its service area and the Commonwealth of Virginia, but also to the nation as a whole, is a valued asset, which must be preserved. Contractors are a part of this employment training system and are expected, and hereby agree, to support and maintain a professional image and conduct themselves professionally while performing their Board supported activities. Presenting an unprofessional image by voicing unwarranted criticism of the Board when they are conducting public meetings with clients, potential clients and with the employer community is inappropriate and unprofessional. If Contractors disagree with Board actions it is appropriate to present their concerns to Board staff or at Board meetings. As private citizens, individuals may voice their views in other forums. This requirement is only applicable to Board supported activities.
- 57. Governing Law, Jurisdiction, and Venue.** This contract is made and entered into in Harrisonburg, Virginia and shall be governed, interpreted, and construed by the laws of the Commonwealth of Virginia and the United States of America.

**58. Severability.** If any provision of the contract or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this contract, or the application of such provision to persons or circumstances other than those which it is invalid or unenforceable, shall not be affected, and each provision of this contract shall be valid and enforced to the full extent permitted by law.

**59. Taxes.** The Contractor shall pay all city, State and Federal taxes required by law and resulting from the work or traceable thereto, under whatever name levied. Said taxes shall not be in addition to the contract price between the Board and the Contractor, as the taxes shall be an obligation of the Contractor and not of Board, and the Board shall be held harmless for same by the Contractor.

**60. Safety.**

- a. The Contractor shall comply with and ensure that the Contractor's personnel comply with all current applicable Local, State and Federal policies, regulations and standards relating to safety and health, including, by way of illustration and not limitation, the standards of the Virginia Occupational Safety and Health Administration for the industry. The provisions of all rules and regulations governing safety as adopted by the Safety and Health Codes Board of the Commonwealth of Virginia and issued by the Department of Labor and Industry under Title 40.1 of the Code of Virginia shall apply to all work under the Contract. The Contractor shall provide or cause to be provided all technical expertise, qualified personnel, equipment, tools, and material to safely accomplish the work specified and performed by the Contractor.
- b. The Contractor shall have, at each location or associated with each location at which the Contractor provides goods and/or services, a supervisor who is competent, qualified, or authorized on the worksite, and who is familiar with policies, regulations and standards applicable to the work being performed. The supervisor must be capable of identifying existing and predictable hazards in the surroundings or working conditions which are hazardous or dangerous to employees or the public and must be capable of ensuring that applicable safety regulations are complied with, and shall have the authority and responsibility to take prompt corrective measures, which may include removal of the Contractor's personnel from the worksite.
- c. In the event the Board determines any operations of the Contractor to be hazardous, the Contractor shall immediately discontinue such operations upon receipt of either written or oral notice by the Board to discontinue such practice.

**61. Fair Labor Standards Act Amendment for Major Disasters.** The Fair Labor Standards Act of 1938 ("FLSA") will apply as if the following language was added to section 7 (the "Maximum Hours Worked" section). This language specifically relates to occurrences of a major disaster (as declared or designated by the State or Federal government) and are applied for a period of two years afterwards. The language is as follows:

"(s)(1) The provisions of this section [maximum hours worked] shall not apply for a period of 2 years after the occurrence of a major disaster to any employee—

"(A) employed to adjust or evaluate claims resulting from or relating to such major disaster, by an employer not engaged, directly or through an affiliate, in underwriting, selling, or marketing property, casualty, or liability insurance policies or contracts;

"(B) who receives from such employer on average weekly compensation of not less than

\$591.00 per week or any minimum weekly amount established by the Secretary, whichever is greater, for the number of weeks such employee is engaged in any of the activities described in subparagraph (C); and “(C) whose duties include any of the following:  
“(i) interviewing insured individuals, individuals who suffered injuries or other damages or losses arising from or relating to a disaster, witnesses, or physicians; “(ii) inspecting property damage or reviewing factual information to prepare damage estimates;  
“(iii) evaluating and making recommendations regarding coverage or compensability of claims or determining liability or value aspects of claims;  
“(iv) negotiating settlements; or  
“(v) making recommendations regarding litigation.  
“(2) The exemption in this subsection shall not affect the exemption provided by section 13(a)(1) [of the FLSA].  
“(3) For purposes of this subsection—  
“(A) the term ‘major disaster’ means any disaster or catastrophe declared or designated by any State or Federal agency or department;  
“(B) the term ‘employee employed to adjust or evaluate claims resulting from or relating to such major disaster’ means an individual who timely secured or secures a license required by applicable law to engage in and perform the activities described in clauses (i) through (v) of paragraph (1)(C) relating to a major disaster, and is employed by an employer that maintains worker compensation insurance coverage or protection for its employees, if required by applicable law, and withholds applicable Federal, State, and local income and payroll taxes from the wages, salaries and any benefits of such employees; and  
“(C) the term ‘affiliate’ means a company that, by reason of ownership or control of 25 percent or more of the outstanding shares of any class of voting securities of one or more companies, directly or indirectly, controls, is controlled by, or is under common control with, another company.”

**62. Health Benefits Coverage for Contraceptives.** Federal funds may not be used to enter into or renew an insurance contract, which includes a provision for prescription drug coverage unless the insurance contract also includes a provision for contraceptive coverage. This requirement does not apply to insurance contracts with 1) the religious plans Personal Care’s HMO and OSF HealthPlans, Inc. and 2) any existing or future plan if the carrier for the plan objects to such coverage on the basis of religious beliefs. In implementing this section, any plan that enters into or renews an insurance contract may not subject any individual to discrimination on the basis that the individual refuses to prescribe or otherwise provide for contraceptives because such activities would be contrary to the individuals’ religious beliefs or moral convictions. Nothing in this term shall be construed to require coverage of abortion or abortion related services.

**63. Drug-Free Workplace to be Maintained by the Contractor (Va. Code § 2.2-4312).**

- a. During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the contractor’s employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor’s workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) State in all solicitations or

advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

- b. For the purposes of this section, “drug-free workplace” means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with the Virginia Public Procurement Act, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

**64. Privacy Act.** No funds provided under this contract shall be used in contravention of the 5 USC 552a (Privacy Act) or regulations implementing the Privacy Act.

**65. Reporting of Waste, Fraud, and Abuse.** The Contractor shall not require employees or subcontractors seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors 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.

**66. Requirement for Blocking Pornography.** No funds provided under this contract shall be used to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography.

**67. Requirement to Provide Certain Information in Public Communications.** When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part by this contract, the Contractor shall clearly state:

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

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

**68. Restriction on Health Benefits Coverage for Abortions.** No funds provided under this contract shall be expended for health benefits coverage that includes coverage of abortions, except when the abortion due to a pregnancy that is the result of rape or incest, or in the case where a woman suffers from a physical disorder, physical injury, including life- endangering physical conditions caused by or arising from the pregnancy itself that would, as certified by a physician, place the women in danger of death unless and abortion is performed. This restriction does not prohibit the Contractor from providing health benefits coverage for abortions when all funds for that specific benefit do not come from a Federal source.

**69. Restriction on Lobbying/Advocacy.** No funds provided under this contract shall be used by the Contractor, other than for normal and recognized executive-legislative relationships, to engage in

lobbying or advocacy activities (including publicity or propaganda purposes or for the preparation of any publication or electronic communication) designed to support or defeat the enactment of federal, state, or local legislation, regulation, appropriations, order, or other administrative action, except in presentation to Congress or a State or local legislature itself or for participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.

- 70. Restriction on the Promotion of Drug Legalization.** No funds provided under this contract shall be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive- congressional communications or where there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance or that federally sponsored clinical trials are being conducted to determine therapeutic advantage.
- 71. Restriction on Purchase of Sterile Needles or Syringes.** No funds provided under this contract shall be used to purchase sterile needles or syringes for the hypodermic injection of any illegal drug.
- 72. Drug-Free Workplace.** The Drug-Free Workplace Act of 1988, 41 U.S.C. 702 et seq., and 2 CFR 182 require that all organizations receiving grants from any Federal agency maintain a drug-free workplace. The Contractor must notify the Board if an employee of the Contractor is convicted of violating a criminal drug statute.
- 73. Hotel-Motel Fire Safety.** Pursuant to 15 U.S.C. 2225a, the Contractor must ensure that all space for conferences, and, conventions or training seminars funded in whole or in part through this contract complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (P.L. 101-391, as amended). The Contractor may search the Hotel Motel National Master List at <https://apps.usfa.fema.gov/hotel/> to see if a property is in compliance, or to find other information about the Act.
- 74. Assurances.** The provisions of the following Acts, applicable regulations made pursuant to said Acts and other listed directives are hereby incorporated into this contract. All changes in said Acts, regulations, and directives are automatically incorporated into this contract. The Contractor assures that he/she:
- a. Will fully comply with the Workforce Innovation and Opportunity Act, all Federal regulations issued pursuant to the Workforce Innovation and Opportunity Act, all State and/or Shenandoah Valley Workforce Development Board policies and requirements.
  - b. Will establish and use internal program management procedures sufficient to prevent fraud and program abuse.
  - c. Will maintain auditable and otherwise adequate records which support the expenditure of all funds under its contract.
  - d. Will comply with relevant procedures, guidelines, and directives created by the Virginia Board of Workforce Development as provided in 2.2-2472 et seq. of the Code of Virginia.
  - e. Will comply with the provisions of Section 89 of the Internal Revenue Code.
  - f. Will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) which prohibits discrimination on the basis of handicaps.

- g. Will not discriminate against any employee or applicant for employment because of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, race, religion, color, sex, age, or national origin unless it is a bona fide occupational qualification reasonably necessary to the normal operation of this Contract.
  - 1) The Contractor agrees to put in conspicuous places, available to employee and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.
  - 2) The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will State that such contractor is an equal opportunity employer.
  - 3) Notices, advertisements, and solicitations placed in accordance with Federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
  - 4) The contractor will include the provisions of the foregoing subparagraphs (1), (2), and (3) in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- h. Will comply with the Virginia Freedom of Information Act, Title 2.2, Chapter 37, (Section 2.2-3700 et seq.) of the Code of Virginia, except as otherwise required by Federal or State law, consistent with Federal confidentiality requirement and with the government Data Collection and Dissemination Practices Act, Title 2.2, Chapter 38, (Section 2.2-3800 et seq.) of the Code of Virginia.
- i. Will comply with the standards contained in the Occupational Safety and Health Standards for General Industry (29 CFR Part 1910) inclusive of the “Virginia Preface to OSHA Standards Book for General Industry”.
- j. Will comply with the Virginia Worker’s Compensation Act as contained in Title 65.2 of the Code of Virginia.
- k. Will comply with the Federal Funding Accountability and Transparency Act of 2006 or Transparency Act – Public Law 109-282, as amended by section 6202(a) of Public Law 100-252 (31 USC 6101).
- l. Will comply with all applicable provisions of the Americans with Disabilities Act.
- m. Will comply with the child labor requirements of the Fair Labor Standards Act or the Child Labor Laws of Virginia, whichever is more restrictive.
- n. Will comply with the requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act Of 1970 (42 U.S.C. 4601 et. seq) that provides for fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs.
- o. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et. seq.) which limits the political activity of employees whose principal employment activities are funded in whole or in part with Federal funds.
- p. Will, for contracts in excess of \$100,000.00, or if a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857-8(c) (1) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c) and is listed by the Environmental Protection Agency (EPA) or is not otherwise exempt, assures that: (1) no facility to be utilized in the performance of the contract has been listed on the EPA List of Violating Facilities; (2) it will notify the CEO of any communication from the Director, Office of Federal Activities, U.S. Environmental Protection

Agency, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities; and (3) it will include substantially this assurance, including this third part, in every nonexempt subcontract.

- q.** Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et. seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. 7401 et. seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93- 205).
- r.** Will comply with Executive Order 11246 (Equal Employment Opportunities), the Copeland “Anti-Kick-Back” Act (40 U.S.C. 276c and 18 U.S.C. 874), the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et. seq.), and the Davis-Bacon Act (40 U.S.C. 276a et. seq.) (whenever the Act’s provision apply to the contract).
- s.** Will comply (if applicable), with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of the insurable construction or acquisition is \$10,000 or more. The Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4001 et seq., provides that no Federal financial assistance to acquire, modernize, or construct property may be provided in communities in the United States identified as flood -prone , unless the community participates in the National Flood Insurance Program and flood insurance is purchased within 1 year of the identification. The flood insurance purchase requirement applies to both public and private applicants for the DOL support. Lists of flood-prone areas that are eligible for flood insurance are published in the Federal Register by FEMA
- t.** Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et. seq.) related to protecting components or potential components of the national wild and scenic rivers system.
- u.** Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et. seq.).
- v.** Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.
- w.** Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
- x.** Will comply with the Virginia Privacy Protection Act of 1976.

- y. Will conform with requirements of Public Law 103-227, Part C – Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), which requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provisions of health, daycare, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children’s services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.
- z. Will provide insurance as follows: Certificate of Insurance and Hold Harmless Agreement. Contractors must name the Shenandoah Valley Workforce Development Board, Inc. as an additional insured on their liability insurance. Contractors will provide on an annual basis at contract award, a certificate of insurance which is proof of liability insurance and that the Board is named as an insured. In addition, a Hold Harmless Agreement is required.
- aa. The Contractor, including its officers and directors, have not been convicted of a felony criminal violation under any Federal law within the preceding 24 months.
- bb. Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- cc. Has not been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any State or Federal department or agency. The Contractor will immediately notify the Board of any legal judgments, claims, arbitration proceedings, lawsuits, or other legal proceedings pending or outstanding (unresolved) against the organization, its owners, officers, or principals through the duration of the contract.
- dd. Will comply with Executive Order 12928, the Contractor is strongly encouraged to provide subcontracting/subgranting opportunities to Historically Black Colleges and Universities and other Minority Institutions such as Hispanic-Serving Institutions and Tribal Colleges and Universities; and to Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals.
- ee. Will comply with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the Contractor is encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles.
- ff. Will comply with Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, dated August 11, 2000, and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI, the Contractor must take reasonable steps to ensure that LEP persons have meaningful access to programs in accordance with DOL’s Policy Guidance on the Prohibition of National Origin Discrimination as it Affects Persons with Limited English Proficiency [05/29/2003] Volume 68, Number 103, Page 32289-32305. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. The Contractor is encouraged to consider the need for language services for LEP

persons served or encountered both in developing budgets and in conducting programs and activities. For assistance and information regarding your LEP obligations, go to <http://www.lep.gov>.

- gg.** Will comply with Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, dated October 1, 2009, the Contractor is encouraged to adopt and enforce policies that ban text messaging while driving company-owned or -rented vehicles, or while driving POV when on official business or when performing any work for or on behalf of the Board. The Contractor is also encouraged to conduct initiatives of the type described in section 3(a) of this order.
- hh.** Will comply with Executive Order 13788, by entering into this contract, the Contractor agrees to comply with sections 8301 through 8303 of title 41, United States Code (commonly known as the "Buy American Act"). Additionally, funds expended on any person or entity that has been convicted of violating the Buy American Act will be considered a disallowed cost. For the purposes of this contract, the Buy American Act requires the Contractor to use, with limited exceptions, only 1) unmanufactured items that have been mined or produced in the United States; and 2) manufactured items that have been manufactured in the United States substantially all from articles, materials, or supplies that were mined, produced, or manufactured in the United States. These requirements do not apply to 1) items for use outside of the United States, 2) items that are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; and 3) manufactured items procured under any contract with an award value that is equal to or less than the micro-purchase threshold (currently \$10,000). In order to claim an exception to these requirements under 1 or 2 above, the recipient must get prior approval from the Board CEO.

**75. Prohibited Acts.** The Contractor shall ensure that WIOA funds are not expended for the following activities:

- a.** Construction, purchase of facilities or buildings, or other capital expenditures for improvements to land or buildings except with the prior approval of the Secretary of Labor.
- b.** Public service employment, except to provide disaster relief employment, as specifically authorized in Section 194(10), WIOA (128 Stat.1606).
- c.** Encouraging or inducing the relocation of a business or part of a business from any location in the United States if the relocation results in any employee losing his or her job at the original location (Section 181(d)(1)), WIOA, 128 Stat. 1588). Employment-generating activities, economic development activities, investment in revolving loan funds, capitalization of businesses, investment in contract bidding resource centers, and similar activities not directly related to training for eligible individuals, with the exception of employer outreach and job development activities, which are considered directly related to training for eligible individuals (Section 181(e), WIOA, 128 Stat. 1588).
- d.** Providing customized training, skill training, or on-the-job training or company-specific assessments of job applicants or employees of a business or a part of a business that has relocated from any location in the United States, until the company has operated at that location for 120 days, if the relocation resulted in any employee losing his or her job at the original location (Section 181(d)(2), WIOA, 128 Stat. 1588).

- e. Foreign travel [WIOA Section 181(e)]. All travel must also comply with Fly America Act ( 49 U.S.C. 40118), which states in part that any air transportation, regardless of price, must be performed by, or under a code-sharing arrangement with, a US Flag air carrier if service provided by such carrier is available.
- f. Goods mined, produced, manufactured, or harvested or services rendered, in whole or in part, by forced or indentured child labor in industries and host countries identified by the DOL prior to December 18, 2015. DOL has identified these goods and services here: <http://www.dol.gov/ilab/reports/child-labor/list-of-products/index-country.htm>.
- g. Political activities [WIOA Section 195(6)].
- h. Funds provided to the Association of Community Organizations for Reform Now (ACORN), or any of its affiliates, subsidiaries, allied organizations, or successors.
- i. Duplication of facilities/services available in the area [WIOA Section 195(2)].
- j. The employment or training of participants in sectarian activities. Participants shall not be employed in the construction, operation, or maintenance of a facility that is or will be used for sectarian instruction or as a place for religious worship. However, WIOA funds may be used for the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship if the organization operating the facility is part of a program or activity providing services to WIOA participants (Section 188(a)(3), WIOA, 128 Stat. 1598).
- k. Charging participants a fee for placement or referral into a training or other WIOA funded program [WIOA Section 195(5)].
- l. Paying the wages of incumbent employees during their participation in economic development activities provided through a Statewide workforce investment system (Section 181(b)(1), WIOA, 128 Stat. 1586).
- m. Displacement of employees by any WIOA participants [WIOA Section 181(b)(2) and (3)].
- n. The promotion or deterrence of union organizing [WIOA Section 181(b)(7)].
- o. Purchase or building/capital improvements, except:
  - 1) To meet obligations for access and accommodation under Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act (ADA) of 1990, as amended, or
  - 2) As specified by this contract
- p. All those unallowable activities in 2 CFR Part 200 et al, (including all prior approval requirements) including, but not limited to:
  - 1) Advertising and public relations not related to participant and employer outreach
  - 2) Alcoholic Beverages;
  - 3) Bad Debts;
  - 4) Capital expenditures for general purpose equipment, buildings, and land;
  - 5) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life;
  - 6) Consultant fees in excess of the rate of pay located at 5 CFR 304.104 with the calculation for a maximum amount located at 5 CFR 304.105;
  - 7) Contingency Provisions;
  - 8) Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation;
  - 9) Costs of prosecution of claims against the Federal Government, including appeals of final Federal agency decisions;

- 10) Costs resulting from non-Federal entity violations of, alleged violations of, or failure to comply with, Federal, state, tribal, local or foreign laws and regulations;
- 11) Donations and contributions including cash, property, and services; additionally, costs of organized fundraising, including financial campaigns, endowment drives, solicitations of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions;
- 12) Entertainment Costs, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities);
- 13) Fines and Penalties;
- 14) Fundraising and Investment Management Costs;
- 15) Goods or Services for Personal Use;
- 16) Housing and Personal Living Expenses;
- 17) Idle Facilities Costs;
- 18) Interest attributable to a fully depreciated asset;
- 19) Interest on borrowed capital, temporary use of endowment funds, or the use of the non-Federal entity's own funds;
- 20) Lobbying Costs;
- 21) Losses on Other Awards or Contracts;
- 22) Memberships, Subscriptions and Professional Activity Costs for Social Organizations or Lobbying Organization;
- 23) Organization Costs;
- 24) Payment of Late fees;
- 25) Selling and Marketing Costs, the only allowable advertising type of costs are those which are solely for recruitment of personnel, the procurement of goods and services, or the disposal of scrap and surplus materials, and program outreach and other specific purposes necessary to meet the requirements of the federal award;
- 26) Rental expense for the use of a home office; and,
- 27) Non-coach travel except when such accommodations would require circuitous routing; require travel during unreasonable hours; excessively prolong travel; result in additional costs that would offset the transportation savings, or offer accommodations not reasonably adequate for the traveler's medical needs. Exceptions must be documented and approved by the Board CEO prior to making the travel arrangements.

**Equal Opportunity Employer/Program**  
**Auxiliary aids and services are available upon request to individuals with disabilities**  
**TDD: VA Relay Center: 711 or 800.828.1120**

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This workforce product was created using 100% of federal U. S. Department of Labor Employment and Training Administration Workforce Innovation and Opportunity Act (WIOA) award of \$1,460,148 (#AA-33260-19-55-A-51) made to Page County on behalf of the Shenandoah Valley Workforce Development Area by the pass-through entity, the Virginia Community College System. No costs of this product were financed by nongovernmental sources. The information contained herein does not necessarily reflect the official position of the U.S. Dept. of Labor.