

TERMS AND CONDITIONS
WORKFORCE INVESTMENT ACT/ ARRA

1. DEFINITIONS:

As used through this Contract, the following terms shall have the meaning set forth below:

- a. **"Agreement" or "Contract"** This document, including all attachments, addenda, and, by reference, applicable Department of Labor (DOL) and Commonwealth of Massachusetts Regulations.
- b. **"Authorized Representatives"** Any person or persons on board or chief elected official (other than the Contracting Officer) authorized to act for the head of the agency.
- c. **"Contracting Officer"** The person executing this contract on behalf of the funding agency, and any other individual who is properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer within the limits of his authority. The Contracting Officer will be the only individual who can legally commit the SDA to the expenditure of funds in connection with this contract or accomplish any contract changes.
- d. **"Contractor"** Party engaged to render services or complete tasks for amounts specified in this contract document.
- e. **"CommCorp" (Commonwealth Corporation)** - Which has statewide responsibility for oversight of select local DOL programs for the Governor.
- f. **"DESE" (Massachusetts Department of Elementary & Secondary Education)** - Which has statewide responsibility for oversight of local DESE programs.
- g. **"DCS" (Division of Career Services)** - Which has statewide responsibility for oversight of select local DOL programs for the Governor.
- h. **"DGA" (Division of Grants Administration)** - A department of the City of Lawrence, DGA acts as the fiscal and administrative entity for WIA, and other workforce investment funds serving the citizens of the fifteen communities comprising the Lower Merrimack Valley Workforce Investment Area.
- i. **"EOLWD" (Executive Office of Labor Workforce Development)** - An agency operating under the Executive branch of the Commonwealth of Massachusetts that oversees and helps to coordinate labor and workforce development activities among the Division of Career Services and the state Workforce Investment Board.
- j. **"DTA" – (Massachusetts Department of Transitional Assistance)** - Which has statewide responsibility for oversight of local DTA programs.
- k. **"Lower Merrimack Valley Workforce Investment Area" (LMVWIA)** - The region served by the local Workforce Investment Board (WIB), DGA, and the ValleyWorks Career Center, consisting of the following fifteen (15) communities: Amesbury; Andover; Boxford; Georgetown; Groveland; Haverhill; Lawrence; Merrimac; Methuen; Newbury; Newburyport; North Andover; Rowley; Salisbury; and West Newbury.
- l. **"Modifications"** - Any changes, amendments, or emendations to this contract which affect the intent, cost, quality or length of contracted services.
- m. **"Participant"** - An individual who has been determined to be eligible to participate in and who is receiving services (except for follow-up services) under a program authorized by WIA Title I. Participation commences on the first day following determination of eligibility on which the individual begins receiving core, intensive training or other services provided under WIA Title I.
- n. **"Subcontract"** - Includes all contracts, agreements or purchases, including purchase orders entered into by the Contractor with a third party to procure property or services under this contract.
- o. **Stand-in Costs** - Costs paid from non-Federal sources which a recipient proposes to substitute or Federal costs which have been disallowed as a result of an audit or other review.
- p. **"WIA" or Workforce Investment Act of 1998** - Which authorized the Secretary of Labor to prescribe such rules, regulations, and guidelines as necessary to provide workforce investment activities that increase the employment, retention and earnings of participants.

2. DGA REPRESENTATIVES

The DGA Administrator shall have the legal authority to commit DGA to the expenditure of funds in connection with this Contract or accomplish any Contract changes. The DGA Administrator may designate employees to act as his/her authorized representatives for certain specific purposes.

3. STATEMENT OF TAX COMPLIANCE

Pursuant to M.G.L., Chapter 26C, Section 49A, the Contractor certifies that it has filed all state tax returns and paid all taxes as required by law.

4. NON-DISCRIMINATION EMPLOYMENT & EQUAL OPPORTUNITY

As a condition to the award of financial assistance from the Department of Labor under Title I of WIA, the Contractor assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws: Section 188 of the Workforce Investment Act of 1998 (WIA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title I-financially assisted program or activity; Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color and national origin; Section 504 of the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990 (ADA), and the ADA Amendments Act of 2008 (P.L. 110-325), which became effective on January 1, 2009 that provides, "a clear and comprehensive national mandate for the elimination of discrimination" and "clear, strong, consistent, enforceable standards addressing discrimination" by reinstating a broad scope of protection to be available under the ADA; which prohibits discrimination against qualified individuals with disabilities; The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs. The grant applicant also assures that it will comply with 29 CFR part 37 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIA Title I-financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIA Title I-financially assisted program or activity. The grant applicant understands that the United States and Massachusetts have the right to seek judicial enforcement of this assurance.

5. POLITICAL ACTIVITIES, LOBBYING PROHIBITION & ANTI-BOYCOTT WARRANTY

The Contractor may not use any Contract funds and none of the services to be provided by the Contractor may be used for any partisan or non-partisan political activity or to further the election or defeat of any candidate for public office. The Contractor will comply, where applicable, with the provisions of the Hatch Act, which limit the political activity of certain State and local government employees, along with contractors, subcontractors and participants funded through the use of WIA funds. The Contractor shall comply with 29 CFR 93 regarding the restrictions on lobbying and the Certification and Disclosure requirements pursuant to Section 319 of Public Law 101-121. Pursuant to Executive Order 130, or as amended, neither the Contractor nor any affiliated company of the Contractor shall participate in or cooperate with any international boycott, as defined in Section 999(b)(3) and (4) of the Internal Revenue Code of 1954, or as amended; nor shall engage in conduct declared to be unlawful by MGL c.151E sec.2. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Contractor or by a person or persons, or a business entity or entities, which owns at least 51% of the ownership interest of the Contractor or any business entity which directly or indirectly owns 51% ownership interest in the Contractor.

6. DRUG FREE WORKPLACE

The Contractor agrees to adhere to the Drug Free Workplace Regulations and will so attest.

7. EPA ASSURANCE

For grants, sub-grants, contracts and subcontracts in excess of \$100,000, or where the grant officer has determined that orders under an indefinite quantity contract or subcontract in any year will exceed \$100,000, or if a facility to be used has been subject of conviction under the Clean Air Act (42 U.S.C. 1857C08 (c)-9(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, the grantee assures that:

No facility to be utilized in the performance of the proposed grant has been listed on the EPA list of Violating Facilities.

It will notify DGA, prior to award, of the receipt of any communication from the Director, Office of Federal Activities, U.S. Environmental Protection Agency, including that a facility to be utilized for the grant is under consideration to be listed on the EPA list of Violating Facilities.

It will include substantially this assurance, including this third part, in every non-exempt sub-grant, contract or subcontract, where applicable.

8. CERTIFICATION REGARDING DEBARMENT

The Contractor certifies, by execution of this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

9. PROVISION OF CHILD CARE

The Contractor certifies that, at the time of execution, it is in compliance with the provisions of the Massachusetts Acts of 1990, c.521 sec. 7 as amended by the Massachusetts Acts of 1991, c.329 and 102 CMR 12.00, and that the Contractor is either a "qualified employer" (it has fifty (50) or more full time employees and has established a dependent care program, child care tuition assistance program, or on-site or nearby child care placements) or the Contractor is an "exempt employer".

10. SECTARIAN ACTIVITY PROHIBITED

No funds received under this Contract will be used for the promotion of religious worship, instruction, other religious activity or anti-religious activity. Participants in the program will not be employed in the construction, operation, or maintenance of that part of any facility which is used for religious instruction or worship. WIA funds may be used for 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 WIA participants.

11. HEALTH AND SAFETY

Appropriate standards for health and safety in work and training situations will be maintained. All training and/or instruction provided to participants under this agreement will take place in an environment where appropriate standards for health, safety and comfort are maintained. Participants in employment activities operated funds as defined in 20 CFR Part 645.220, or participants in on-the-job training operated with WIA funds as defined in 20 CFR Part 663.700, are subject to the same health and safety standards established under State and Federal law which are applicable to similarly employed employees, of the same employer, who are not participants in programs under WIA. Facilities will be adequately heated and ventilated; with adequate toilet, rest and lunch areas; easy access to potable water; and separate and clearly delineated non-smoking areas.

12. CHILD LABOR

No participant under 18 years of age will be employed in any occupation which the U.S. Secretary of Labor has found to be particularly hazardous for persons between 16 and 18 years of age (a list of such occupations is published in 29 PL Part 1500, Subpart E). Any eligible trainees under 16 years of age will be employed only in accordance with limitations imposed by 29 CFR Part 1500 Subpart C.

13. NEPOTISM

No Contractor will hire a person in an On-The-Job Training position, administrative capacity or consultant position funded under WIA if the individual or a member of his/her immediate family is employed in the administrative capacity of DOL, DWD, Commonwealth Corporation, the Contractor or DGA. The Contractor agrees to inform DGA of any potential violation of the nepotism restriction.

14. UNIONIZATION AND ANTI-UNIONIZATION

No WIA funds shall in any way be used to either promote or oppose unionization. No participants may be placed into or remain working in any position which is affected by labor disputes involving a work stoppage. An employment activity operated with funds, as described in 20 CFR Part 645.220 shall not violate existing contracts for services or collective bargaining agreements. Where such an employment activity would violate a collective bargaining agreement, authorized individuals of the appropriate labor organization and employer shall provide written concurrence before the employment activity is undertaken. Nothing in this section shall prevent an employer from checking off union dues or service fees pursuant to applicable collective bargaining agreements or state law.

15. FUNDING AND FISCAL YEAR APPROPRIATION

Appropriations for expenditures by DGA and authorizations to spend for particular purposes are made on a fiscal year basis. The fiscal year of DGA is the twelve-month period ending June 30 of each year. The obligation of DGA under this Contract for any subsequent fiscal year following the fiscal year in which this

Contract is executed is subject to the appropriation to DGA of funds sufficient to discharge DGA's obligation which accrues in such subsequent fiscal year, and to the authorization to spend such funds for the purposes of this Contract. In the absence of such appropriation or authorization, this Contract shall be terminated immediately without liability for damages, penalties or other charges arising from early termination.

16. USE OF FUNDS, COST LIMITATIONS & EXPENDITURE REQUIREMENTS

Funds shall be used for those costs which are applicable to this Agreement, consistent with the approved budget and subject to the applicable WIA Cost Limitations and Expenditure Requirements as described in 20 CFR Part 667.200 and 20 CFR Part 667.210. Expenditures of WIA funds totaling less than the maximum grant obligation, will have cost limitations based on actual expenditures utilizing the percent limitations specified in DGA Policy or, when applicable, the Contractor's individual grant sub-agreement. Funds shall not be used for the Contractor's general administration except those expenses applicable to the administration of this Contract. No program funds shall be obligated for payment of costs incurred for the program prior to the effective date of this Agreement or costs requiring specific DGA approval until the Contractor is advised by DGA in writing that there is no objection to so proceeding. The Contractor agrees to refund to DGA any payment or portions of payment DGA determines were not properly due to the Contractor under the terms and conditions of this Agreement. WIA funds may not be used to substitute for other funding in non-WIA programs. Disallowed costs will be repaid to DGA by the Contractor from funds other than those granted to the Contractor by DGA or other federal funding sources.

Revenues earned by a governmental or private non-profit contractor that are in excess of the actual costs incurred in providing services shall be treated as program income. As such, the Contractor may retain any program income earned by the Contractor only if such income is added to the funds committed to the contract under which it was earned, that such income is used for contract purposes and under the terms and conditions applicable to the use of the grant funds, and such income is reported to DGA. WIA classification of costs and administrative cost limitations, where applicable, shall apply to such funds. Program income not used in accordance with the requirements of this section, 29 CFR 95.24 or 29 CFR 97.25(g)(2) shall be returned to DGA. DGA shall not be obligated to reimburse the Contractor for costs incurred in excess of the approved costs, and the Contractor shall not be obligated to incur expenses in excess of the approved costs.

17. MAINTENANCE OF EFFORT

Funds provided under this Contract shall only be used for activities that are in addition to those which would otherwise be available in the area in the absence of such funds. Funds shall not be used to duplicate facilities or services available in the area (with or without reimbursement from Federal, State or local services). Funds provided under WIA shall not be used to duplicate facilities or services available in the area (with or without reimbursement from Federal, State or local services) unless it is demonstrated that the alternative services or facilities would be more effective or more likely to achieve the program's performance goals.

18. COMPLIANCE

The Contractor will comply with all Federal, State, County and local, statutes, laws, and regulations, and with DGA policies. The Contractor will comply with the Workforce Investment Act as Amended and its implementing Regulations found at 20 CFR Part 652, et al, and/or the Contractor will comply with the provisions of Title IV of the Social Security Act as Amended and its implementing Regulations found at 20 CFR Part 645. No provision of this Agreement is intended to relieve the Contractor from the responsibility and liability for complying with applicable laws, regulations, and policies.

19. CORRECTIVE ACTION

If a contractor's performance is found not to comply with program performance as outlined in the terms and conditions of this Contract, the Contractor will be required to implement corrective action. Corrective action may be required of the Contractor under, but not limited to, the following circumstances: The Contractor has failed to deliver services or products in the Contract; the Contractor failed to deliver these services or products according to the Contract schedule; or that the Contractor has failed to deliver at the quality and outcomes called for in the Contract.

20. SANCTIONS

DGA shall reserve the right to place sanctions on the Contractor for deficiencies concerning program performance or for noncompliance with the WIA Final Rules, 20 CFR Part 652, et al., the Interim Final Rules, 20 CFR Part 645 or as amended, or the stated policies of DGA and/or Commonwealth Corporation. Wherever feasible, DGA shall give the Contractor an opportunity to prepare and carry out a corrective action plan. However, DGA's failure to provide the Contractor with an opportunity for corrective action shall not prevent DGA from imposing sanctions. Such sanctions may include, but are not limited to: termination or reduction of contract funding; withholding of payment; debarment of particular contractor(s) or sub-contractor(s); repayment from non-federal funds for violations of laws and regulations.

21. TERMINATIONS

This Contract shall terminate as specified above, unless terminated prior thereto as follows:

- a. **"Without Cause"** - Either party may terminate this Contract, without cause and without penalty, by giving written notice to the other party at least thirty (30) calendar days prior to the effective date of termination as stated in the notice, or such other period as is mutually agreed in advance by the parties.
- b. **"For Cause"** - If the Contractor fails to perform under this Contract, or fails to make sufficient progress so as to endanger Contract performance, or fails in any way to comply with the terms and conditions of this Contract, DGA may terminate this Contract, in whole or in part, by giving written notice to the Contractor at least ten (10)

calendar days before the effective date of termination stated in the notice. The notice shall state the reason(s) for termination and will state a reasonable period, not less than (10) calendar days, during which the reason(s) for termination must be remedied, subject to the approval of DGA. DGA reserves the right to terminate this Contract immediately in the event of the Contractor's criminal indictment, participation in fraudulent activities or in the event the Contractor files for bankruptcy.

- c. **"Emergency"** - DGA may terminate or suspend this Contract by providing written notice to the Contractor stating the grounds for DGA's action, in the form of telegram, mailgram, hand carried letter or other appropriate written means, if DGA determines that immediate action is necessary to protect state and/or federal funds or property or to protect individuals from injury. Such termination or suspension action shall be effective upon receipt by the Contractor of notice of either suspension or termination. In the case of a suspension under this paragraph, the notice of suspension shall be accompanied by instructions from DGA specifying requisite action(s) by the Contractor to remove the suspension, a proposed timetable for meeting those requirements and a description of the allowable activities and costs, if any, during the suspension period. Failure by the Contractor to remedy any identified deficiencies according to the timetable prescribed by DGA shall be cause for immediate termination.
- d. **"Availability of Funds"** - This Agreement is contingent upon the receipt of funds and continued authorization for program activities. In the event that such funds become unavailable for any reason or authorization for program activities is withdrawn or otherwise modified, DGA has the unilateral right and absolute discretion to modify or terminate this Agreement at any time.
- e. **"Force Majeure"** - Neither party shall be liable to the other nor be deemed to be in breach of this Contract for failure or delay in rendering performance arising out of causes factually beyond its control and without its fault or negligence. Such causes may include, but are not limited to: Acts of God or the public enemy, wars, fires, floods, epidemics, quarantine restrictions, strikes, unforeseen freight embargoes or unusually severe weather. Dates or times of performance shall be extended to the extent of delays excused by this section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of this delay. It is agreed that since the performance dates of this Contract are of the essence and important to the implementation of essential DGA work, continued failure to perform for periods aggregating forty five (45) or more calendar days during the contract performance period, even for causes beyond the control of the Contractor, shall afford DGA the right to terminate this Contract without termination costs or penalties.

22. OBLIGATION IN EVENT OF TERMINATION

In the event of any termination, the Contractor shall not be relieved of liability to DGA for injury or damages sustained by DGA by virtue of any breach of this Contract by the Contractor. DGA shall promptly pay Contractor for all services performed to the effective date of termination provided Contractor is not in default of the terms of this Contract and submits to DGA a properly completed invoice, with supporting documentation covering such services, no later than thirty (30) days after the effective date of termination. In the event of termination pursuant to Section 11. (b), DGA will withhold any payments to the Contractor for the purpose of offset until such time as the exact amount of damages due to DGA from the Contractor is determined. Upon termination, all documents, finished or unfinished, data, studies and reports prepared by Contractor pursuant to this Contract shall become the property of DGA.

23. AUDITS

The Contractor agrees to adhere to the audit requirements of the WIA Act the regulations promulgated thereunder by the U.S. Department of Labor (20 CFR Part 667.200(b), 20 CFR Part 645.230), the provisions contained in OMB Circular A-133, as applicable, and the procedures and policies of DGA/Commonwealth Corporation. Where applicable, the Contractor shall submit to DGA their audit no later than 30 days after the audit of a program funded under this Contract is complete, but not later than 9 months after the end of the program.

24. INDEMNIFICATION

Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the Commonwealth of Massachusetts and DGA, including its agents, officers and employees against any and all liability and damages the Commonwealth and DGA may sustain or incur in connection with the performance of this Contract by reason of acts, inaction, omissions, negligence or reckless or intentional conduct of the Contractor, its agent(s), officers, employees or subcontractors; provided that the Contractor is notified by the Commonwealth and DGA of any claim within a reasonable time after the Commonwealth and DGA become aware of it, and the Contractor is afforded an opportunity to participate in the defense of such claim and any negotiated settlement agreement or final judgment.

25. WORKERS COMPENSATION AND OTHER INSURANCE

The Contractor shall procure and thereafter maintain Workers Compensation, employer's liability, comprehensive general liability (bodily injury), and comprehensive automobile liability (bodily injury and property damage) insurance, with respect to insurance, under this Contract. If the Contractor receives advance payments, the Contractor shall obtain a personal fidelity bond for a minimum of \$50,000 for each of its employees who is permitted to engage in financial transactions involving WIA funds. Bonding should include but not be limited to Contractor employees who handle payroll.

Instead of Worker's Compensation insurance, the Contractor may, with the written approval of the Executive Director of DGA, maintain a self-insurance program. All required insurance shall be for amounts and in such form as the Executive Director may require or approve. Such insurance shall be fully funded by the Contractor. The Contractor shall be reimbursed for that portion allowable to the Contract for the reasonable cost of insurance as required or approved pursuant to the provisions of this clause. Upon written request, Contractor will submit to DGA Certificates of Insurance for the above mentioned areas.

26. ADVERTISING

All materials related to this program including, but not limited to, press releases, newspaper articles, pamphlets and fliers concerning the Contractor's relationship with DGA, must refer to the DGA as funding source. Such materials shall clearly state the percentage of the total costs of the program or project which will be financed with federal money; the dollar amount of the federal funds for the project or program; and the percentage and dollar amount of the total cost of the project or program that will be financed by non governmental sources. Copies of materials intended for public consumption are to be sent to DGA.

27. DISCLOSURE OF CONFIDENTIAL INFORMATION

- a. The Contractor shall maintain the confidentiality of any information regarding trainees, project participants and their immediate families that may be obtained through application forms, interviews, tests, reports from public agencies or counselors, or any other source. Without the permission of the trainees or participants, such information shall be divulged only as necessary for purposes related to the performance or evaluation of the Contract and to persons having responsibilities under the Contract. The Contractor shall comply with the provisions of the Fair Information Practices Act. Ch. 776 of the Acts of 1975, and with DGA policy.
- b. The Contractor agrees to take reasonable steps to insure the physical security of such data under its control, including, but not limited to: fire protection against smoke and water damage; alarm systems; locked files, guards, or other devices reasonably expected to prevent loss or unauthorized access to electronically or mechanically held data; limited terminal access, access to input documents and output documents, and design provisions to limit use of personal data.
- c. The Contractor agrees that it will inform each of its employees, having any involvement with personal data or other confidential information, of the laws and regulations relating to confidentiality. DGA shall have access to any data maintained pursuant to the Contract without the consent of the data subject. The Contractor shall use personal data and materials derived from such data only as necessary in the performance of this Contract.

28. ACCOUNTING RECORDKEEPING

The Contractor shall maintain its own accounting system which, at a minimum, must include Books of Original Entry, a General Ledger or other mechanism for summarizing the result of transactions, and all supporting documentation in accordance with Generally Accepted Accounting Principles (GAAP). The Contractor shall adequately safeguard funds to ensure that they are used for the purposes authorized. Necessary accounting records must be maintained to document the proper use of these funds for the intended purposes and to identify individual contract cash balances.

29. RECORDS, RECORD RETENTION

The Contractor will keep full and detailed accounts and records as may be necessary for proper financial management under this Contract. The Contractor shall comply with any programmatic and fiscal recordkeeping and reporting requirements identified by DGA, including format, contents, details and submission requirements.

At a minimum, records/files concerning DGA-funded trainees will include the following: Copies of weekly timesheets and any related attendance documentation; Any material concerning the trainee which may be transmitted from DGA or the Career Center to the Contractor, such as any enrollment documents, intake/assessment testing documents, Individual Service Strategy (ISS), DGA Grievance Policy, etc; Any materials normally utilized by the Contractor to record and assess the trainee's progress such as copies of tests, projects, etc, including progress notes composed by Contractor staff regarding the DGA-funded trainee's participation and progress; Any other documentation or records not otherwise identified in this section which DGA may subsequently request of the Contractor.

30. EXAMINATION OF RECORDS

The Contractor agrees that the Governor, the Director of the Department Labor & Workforce Development (DWD), the President of Commonwealth Corporation, the State Auditor, the U.S. Department of Labor and DGA or any of their duly authorized representatives shall, until the expiration of the retention period under this Contract, have access to and the right to examine and copy, at reasonable times and upon reasonable notice, any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to the Contract; the right to interview employees of the Contractor with respect to transactions related to this Contract; and the right to enter onto the premises of the Contractor at all reasonable times in order to have access to such books, documents, papers, records and employees. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that DGA, its funding sources and any of their duly authorized representatives shall, until the expiration of the retention period under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor involving transactions related to the subcontract.

Without limiting DGA's other legal remedies, in the event that the Contractor fails to comply with this provision, the parties agree that DGA may obtain specific performance of the clause through the courts.

31. MONITORING ACCESS

At any time during the term of this Agreement, Contractor shall permit the Governor, the Director of the Department of Workforce Development, the State Auditor, the President of Commonwealth Corporation, the U.S. Department of Labor or their designated representatives, and DGA to conduct on site evaluations and monitor program performance to ensure compliance with the terms of this Agreement. At any time during normal business hours and as frequently as deemed necessary, there shall be made available, for examination and audit, all contracts, invoices, payroll records, general ledger and supporting accounting records, personnel files, attendance records and any other data relating to all matters covered by this Agreement. Monitoring visits may include examination of participant case files, observation of program activities and interviews with staff and participants. Records may be copied at a reasonable expense, if necessary.

32. NON-ASSIGNABILITY

This agreement is between DGA and the Contractor. The Contractor may not assign or otherwise transfer total liability, responsibility, obligation, duty or interest under this Contract. All monetary recompense for Contracted services shall be paid by DGA as outlined in the Budget and invoicing instructions subject to the Contractor's compliance with appropriate cost limitations and expenditure requirements. The Contract total represents the maximum total costs that may be incurred under this agreement.

33. SUBCONTRACTS

Pursuant to this Contract, the Contractor may not subcontract any of the services to be provided or delegate in part or, with respect to WIA funded Programs delegate in whole to any organization, association, individual, corporation, partnership or other such entity without the written consent of DGA prior to placing any subcontract. The Contractor shall give DGA immediate notice of any claim made against the Contractor by any subcontractor or vendor which, in the opinion of the Contractor, may result in litigation, related in any way to this Contract, with respect to which the Contractor may be entitled to reimbursement from DGA. The consent, approval, or ratification of a subcontract or any terms thereof shall not put DGA in contractual agreement privately with the subcontractor; shall not, unless otherwise stated, constitute an endorsement or approval of any provision of the subcontract; and shall not relieve the Contractor of its responsibility for the performance and provision of services or its obligation, duty or interest under this Contract. Contractor shall not subcontract with nor delegate to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 "Debarment and Suspension"

34. UTILIZATION OF MINORITY OR WOMEN-OWNED BUSINESS ENTERPRISES

It is the policy of the government that minority or women-owned business enterprises shall have the maximum practicable opportunity to participate in the performance of government contracts. The Contractor agrees to use its best efforts to carry out the policy in the award of subcontracts to the fullest extent consistent with the efficient performance of this Contract.

35. GRIEVANCE PROCEDURE POLICY

Pursuant to the procedures set forth below, any individual or organization may file a grievance alleging a violation of the Welfare to Work Program, Workforce Investment Act, rules, regulations, grants or other agreements made under the programs by the Commonwealth of Massachusetts, Commonwealth Corporation, DGA or contractors. Grievances that do not involve a violation of the regulations, grant terms or other agreements under the programs are not subject to this procedure. With the exception of complaints alleging fraud, criminal activity or discrimination, the filing of a grievance under WIA must be made within one year of the date of the alleged violation. Grievances under WIA alleging discrimination, including those alleging gender discrimination, must be filed within one hundred eighty (180) days of the date of the alleged violation.

Where the alleged violation of program regulations is also an alleged violation of another law, regulation or agreement, nothing in this procedure precludes an individual or organization from filing a complaint or grievance under such other law or agreement with respect to the non-WIA cause of action, at the same time that a grievance under this procedure is pending.

Any Contractor who is the recipient of WIA funds shall continue to operate or shall establish and maintain for WIA participants a grievance or complaint procedure relating to the terms and conditions of employment. Any Contractor who does not have a grievance procedure may use this procedure by submitting a letter requesting inclusion in DGA's Grievance Procedure.

As the WIA administrative entity, DGA (and its Contractors) must inform participants of the grievance or complaint procedure they are to follow. As the administrative entity, DGA (and Contractors) must inform participants and any currently employed workers displaced by program participants of the grievance or complaint procedure they are to follow. The Contractor's procedures must provide, upon request by the complainant, a review of the Contractor's decision by DGA, the Commonwealth Corporation or its designee and by the Governor or his/her designee, if necessary, in accordance with 20 CFR Parts 627.501, 627.502, 627.503, 627.504 and 20 CFR Part 645.270 (f).

- a. The Contractor agrees to implement and maintain an Equal Employment Opportunity Program and a related Affirmative Action Plan. Such a program shall include (but is not limited to):
 1. Formulation and maintenance of a grievance resolution system for participants and staff.
 2. Notification to all participants and staff, in writing, at enrollment or hire, of the Program's Grievance Resolution System, as well as the EEO and Affirmative Action compliance and other related activities.
 3. Designation of staff within the Contractor as responsible for EEO and Affirmative Action compliance and other related activities. Designation of a Grievance Officer.
- b. Any Contractor that does not maintain an Equal Employment Opportunity Program and a related Affirmative Action Plan agrees to fully participate in the Equal Employment and Affirmative Action Programs and activities established by DGA, including procedures to be established for monitoring EEO/AA activities.
- c. This grievance procedure shall be used in all protests, disputes and claims causes in reference to this Agreement.

36. 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 shall be decided by the DGA Administrator, or the duly authorized representative, who shall present a decision in writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the DGA Administrator, or the duly authorized representative, shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the DGA, or the duly authorized representative, a written appeal addressed to DGA. The decision of DGA or its duly authorized representatives for the determination of such appeals shall be final and conclusive unless determined by the court of competent jurisdiction to have been fraudulent or capricious or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed efficiently with the performance of this Contract and in accordance with the decision of the DGA Administrator, or the duly authorized representative.
- b. This "Dispute" clause does not preclude consideration of law questions 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.

37. CONFLICTS OF INTEREST/CODE OF CONDUCT

The Contractor shall comply with the requirements of 20 CFR Part 667.200(4)(i) and 29 CFR Part 97.36(b)(3) which address codes of conduct and real or apparent conflict of interest issues. No officer, member or employee of the Contractor shall cast a vote on, or participate in, any decision making capacity (including discussions to which all proposers are not afforded equal opportunity) on the provision of services by such officer, member or employee (or any organization which that officer, member or employee directly represents), or on any matter which would provide any direct financial benefit to that officer, member or employee, or a member of their immediate family. The Contractor warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Contractor to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract. No officer, member, or employee of DGA and no member of its governing body who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project shall (a) participate in any decision relating to this agreement which affects his/her personal interest in any corporation, partnership or association in which he/she is, directly or indirectly, interested; or (b) have any interest, direct or indirect, in this agreement or the proceeds hereof.

38. INTELLECTUAL PROPERTY RIGHTS, OWNERSHIP OF MATERIALS

All reports, data, and material prepared by the Contractor under its agreement or furnished to the Contractor by DGA, its representatives, or otherwise obtained or prepared under the terms of this agreement, shall remain the property of DGA. Upon the termination of this Contract, the originals of all finished and unfinished, documents, data, studies, reports, manuals, materials or other "deliverable", identified in the approved plan or work statement, prepared or delivered by the Contractor specifically pursuant to this Contract, or paid for with Contract funds, shall become the property of DGA, and the Commonwealth shall have title and own the copyright in such "deliverable". The Contractor shall have a royalty-free non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use these "deliverables" whether published or unpublished, unless such use is restricted in this Contract. The Contractor shall not make any application for patent or copyright of any "deliverable" without the prior written consent of DGA. ***Unless other procedures are specified by the parties in this Contract, the Contractor shall not make any press statement or issue any material for publication, derived from the "deliverable" under this Contract without the prior written***

approval of DGA. The originals of finished and unfinished documents, data, studies, reports, manuals, materials or programs provided by the Contractor which are **not** copyrightable by DGA or which are already owned or copyrighted by the Contractor shall be specifically identified as a "non-deliverable" in this Contract. DGA shall have a royalty-free non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use any "non-deliverable" identified in this Contract, unless restrictions on such use are specified.

39. PROPERTY

No WIA funds may be expended for the acquisition of real property without the prior written consent of DGA. Real property means land and structures thereto, excluding movable machinery and equipment. The Contractor shall keep an adequate inventory of any and all equipment, supplies and materials purchased with funds pursuant to the approved budget. The Contractor shall follow applicable WIA regulations and DGA Policy F-35 as amended regarding the disposition of property at the end of the contract period, unless the Contractor receives different instructions in writing from the Commonwealth Corporation.

40. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION

Parties to this Agreement will comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1979 (P.L. 91-646) which requires fair and equitable treatment of persons displaced as a result of Federal and Federally assisted programs.

41. RENTAL AND LEASING OF PREMISES

All rental and leasing of premises must be reasonable, necessary, and properly procured.

42. PELL GRANTS

Contractor shall be responsible for ensuring the filing of applications for Pell Grant or Supplemental Education Opportunity Grant (SEOG) assistance or any other assistance available for each Participant enrolled in a Pell Grant or SEOG approved course. The Contractor shall reduce the amount due to the Contractor from DGA, or remit to DGA the portion of the Pell Grant to be applied to the cost of tuition, fees and books, if received after the termination of this Contract. Notwithstanding any provision of this Agreement to the contrary, no compensation shall be earned or deemed payable for services provided for under this Agreement to the extent that any such services are paid for, directly or indirectly, through a Pell Grant (or Supplemental Education Opportunity Grant (SEOG)) or by any other source. The Contractor shall take sufficient actions to assure that services paid for through such grants are not paid for under this Agreement (including the reduction of invoices to the extent of such grant payments, the return of any funds paid hereunder for services paid for through such grants, and any other actions as may be required by DGA).

43. MODIFICATIONS

The DGA Administrator, or the duly authorized representative, will at any time, by written order, and without notice to the sureties, make changes within the general scope of this Contract. If any such changes cause an increase or decrease in the cost of, or time required for performance of any part of the work under this Contract, whether changed or not by any such order, an equitable adjustment shall be made in the Contract price and related profit and shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from date of receipt by the Contractor of the notification of changes; provided, however, that the DGA Administrator decides that the facts justify such action, will receive and act upon any such claim asserted at any time prior to final payment under this Contract. All cost items subject to variation beyond the control of the Contractor shall be subject to re-negotiation between DGA and the Contractor. Failure to agree to any adjustment shall be a dispute concerning a question of facts within the meaning of the clause of this Contract entitled "Disputes". However, nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed. Both parties shall approve all Contract modifications in writing. Contract and modifications shall be accomplished on an authorized Contract Modification Sheet. In situations where cost increases are the direct result of legislation or collective bargaining agreements, this Contract may be modified to reflect those changes.

44. FORUM AND CHOICE OF LAW

Any actions arising out of this Contract shall be governed by the laws of the Commonwealth of Massachusetts, and shall be brought and maintained in a state or federal court within the Commonwealth, which shall have exclusive jurisdiction thereof.

45. WAIVERS

Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

46. SEVERABILITY, HEADINGS AND INTERPRETATION, INTEGRATION

If any Article or provision of this Agreement is declared or found to be illegal, unenforceable, or void, then both DGA and the Contractor shall be relieved of all obligations under that provision. The remainder of the Agreement shall be enforced to the fullest extent permitted by law. The headings used herein are for reference and convenience only and shall not be a factor in the interpretation of this Contract. This Agreement shall supersede all other oral negotiations and written agreements relating to the performance of this Contract, including contracts provided by the Contractor.

47. OFFICIAL ENROLLMENT

In the cases where the contract is for the provision of training, official enrollment occurs on the first day of the program. Individuals must be referred to the provider by the ValleyWorks Career Center (VWCC) following eligibility determination. If a vendor/program accepts and provides services to any individual that has not been determined eligible and referred by the VWCC, the vendor will be responsible for all costs associated with the provision of services to that individual. If an eligible and referred individual does not begin the training program, they will not be considered an official enrollment.