



## **TERMS AND CONDITIONS**

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## General Terms and Conditions

### 1. Definitions

A. *Contract* shall mean the Contract entered into between Contractor and CESER dated [ ], including the Statement of Work, these General Terms and Conditions, and any other attachments and exhibits.

B. *Work* shall mean all deliverables as set out in Exhibit A and provided by Contractor, pursuant to the Contract.

C. *Concerned Funding Agency* means the U.S. Department of Labor, providing funding, in whole or in part, for this Contract through an agreement with CESER.

### 2. Relationship

The Contractor is an independent contractor, and the relationship between CESER and the Contractor shall be solely contractual and not in the nature of a partnership, joint venture, or general agency. Neither party may speak nor act on behalf of the other, nor legally commit the other.

### 3. Arbitration and applicable law

Any matter arising from or incident to this Agreement, including, but not limited to, the law of contract formation, is governed and construed exclusively by and under the laws of the District of Columbia, not including the conflicts of laws and principles of the District of Columbia. Any controversy or claim arising out of or relating to this Contract or breach thereof, that cannot be resolved through good faith negotiations among the parties, may, upon mutual agreement of the parties, be settled by arbitration by a neutral third party, acceptable to both Contractor and CESER, to be held in the District of Columbia. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Any cause of action that is not resolved by arbitration shall be submitted and resolved by the courts in and of the District of Columbia.

### 4. Assignment and Subcontracting

This Contract or any interest hereunder shall not be assigned or transferred by the Contractor or CESER without prior written consent of the other and is subject to such terms and conditions that the other may impose.

### 5. Financial Record Keeping and Inspection

The Contractor warrants that it shall, during the term of the Contract and for a period of three (3) years following the termination or expiration of the Contract, maintain accurate and complete financial records, including accounts, books, and other records related to charges, costs, disbursements, and expenses, substantially in accordance with generally accepted accounting principles and practices, consistently applied that are applicable to a fixed price contract.

CESER, directly or through its authorized agents, auditors, or other independent accounting firm, at its own expense, and the Concerned Funding Agency directly or through its duly authorized representatives, shall have the right, from time to time, upon at least ten (10) days' notice and at mutually agreeable times, to audit, inspect, and copy the Contractor's records relevant to this Contract. The Contractor shall fully cooperate, including by making available such of its personnel, records, and facilities as are reasonably requested by CESER or the Concerned Funding Agency. This Section shall remain in force during the term of the Contract and for the three (3) years following the termination or expiration of the Contract. If an audit, litigation, or other action involving the records is started before the end of the three (3) year period, Contractor agrees to maintain the records until the end of the three (3) year period or until the audit, litigation, or other action is completed, whichever is later.

#### 6. Right to Disseminate

Unless otherwise expressly set forth to the contrary in the Contract, CESER shall have the right to use and have used, for any purpose, unpatented information resulting from the services performed by the Contractor, which the Contractor may disclose to CESER during performance of this Contract, if such information is furnished without restrictions on its use.

#### 7. Publications

The Contractor may not publish information related to any work on this Contract via any media without the express written agreement of CESER and the affected state Unemployment Insurance agencies.

#### 8. Remedies

The Contractor acknowledges that monetary damages alone may not adequately compensate CESER in the event of a breach by the Contractor of the restrictions imposed and, therefore, the Contractor hereby agrees that, in addition to all remedies available to CESER at law or in equity, including, if applicable, under the District of Columbia Trade Secrets Act, or corresponding applicable State law, CESER shall be entitled to seek interim restraints and permanent injunctive relief for enforcement thereof, and to an accounting and payment over of all receipts realized by the Contractor as a result of such breach.

#### 9. Ownership Rights

Except for any Contractor Technology contained therein, the Work provided by the Contractor pursuant to the Contract shall be "work for hire," and therefore, all Work shall be sole and exclusive property of CESER. To the extent that the Work (except for Contractor Technology contained therein), or any part of them, may not constitute work for hire under the law, Contractor hereby transfers to CESER all right, title, and interest in and to the Work. Without limiting the forgoing, CESER shall have access to the Work at any time during the term of the Contract. Contractor hereby grants to CESER a non-exclusive, royalty-free, worldwide right to use the Contractor Technology contained in Work solely in connection with use of the Work. Such rights

and license are granted contingent upon full payment to Contractor by CESER for the Work. “Contractor Technology” shall mean any tools, technologies, methodologies, templates, or other intellectual property created by Contractor or its permitted subcontractors prior to, or independently of, this Agreement, and any modifications or derivatives thereof. Contractor will obtain CESER’s prior consent to include any such Contractor Technology in the Work.

#### 10. Personnel

Any personnel identified by name in the Contract or in subsequent Task Orders under this Contract as individuals who will be performing services under this Contract or producing the Work as “Key Personnel” may not be changed without the written approval of CESER, except in the event of serious illness, serious personal circumstances, or separation from service. In the event that “Key Personnel” are changed because of serious illness, serious personal circumstances, or separation from service, Contractor agrees to notify CESER as soon as reasonably possible about the need for such a change.

#### 11. Place of Performance

Work done by Contractor under this Contract will be done primarily at the Contractor’s facilities or in remote work spaces, if applicable. On-site Work in selected States will occur as directed by CESER. All other meetings, aside from On-Site Work in States and other in-person meetings between Contractor and CESER, as scheduled, will be managed through conference calls and webinars.

#### 12. Travel

Contractor’s Work requires travel to States for on-site visits. Prior to traveling to any location, Contractor will request approval for travel in the manner specified by CESER. CESER will respond to all travel requests within two business days. Following completion of travel, Contractor will submit an expense report to CESER to request reimbursement. CESER will respond to reimbursement requests within five business days.

Reimbursement for travel shall be subject to the per diem rates for the current Federal Fiscal Year, in accordance with the General Services Administration’s (GSA) travel schedules: <https://www.gsa.gov/travel/plan-book/per-diem-rates>. First class and business class airfare will not be eligible for reimbursement.

#### 13. Modification of the Contract

The Contract may not be modified except by further written agreement signed by the parties. Assuming CESER’s satisfaction with the Contractor’s Work, it is anticipated that contract modifications for Phase IV – Plan Implementation and Phase V – Impact Measurement and Behavioral Insights Toolkit will follow the completion of Phase III – Improper Payment Reduction Plan in each state. CESER will offer this additional work at the appropriate time and the parties, at their option, will negotiate a written modification to this Contract.

#### 14. Excusable Delays

The Contractor shall not be liable for damages, including liquidated damages, if any, for delays in performance or failure to perform due to causes beyond the control and without fault or negligence of the Contractor. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of the United States Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather.

#### 15. Inspection of Services

A. All services shall be subject to inspection by CESER, to the extent practicable, at all times and places during the Contract. All inspections by CESER shall be made in such manner as not to unduly delay the work.

B. If any services performed hereunder are not in conformity with the requirements of Section 24, Warranty of Services, of this Contract, CESER shall have the right to require the Contractor to perform the services again in conformity with the requirements of Section 23, Warranty of Services, of the Contract, at no additional expense to CESER. When the defective services performed are of such nature that the defect cannot be corrected by re-performance of the services, CESER shall have the right to require the Contractor to immediately take all steps necessary to ensure future performance of the services in conformity with the requirements of the Contract. If the Contractor fails to perform promptly the non-conforming services again or to take necessary steps to ensure future performance of the non-conforming services in conformity with the requirements of the Contract, CESER shall have the right to either: (a) by Contract or otherwise, have the non-conforming services performed in conformity with the Contract requirements and seek as damages from the Contractor the amount by which the actual, reasonable fees paid by CESER to a substitute vendor (or incurred itself if CESER performs the replacement services) in the performance of such replacement services exceeds the fees to be paid to Contractor for such non-conforming services; or (b) terminate this Contract.

#### 16. Insurance Requirements

The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of coverage in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Agreement, in respect of death or personal injury, or loss of or damage to property. The Contractor shall produce to CESER, on request, copies of all insurance policies referred to in this condition, or other evidence confirming the existence and extent of the coverage given by those policies.

**CONTRACTOR'S COMMERCIAL GENERAL LIABILITY INSURANCE** - Contractor shall purchase and maintain such insurance as will protect him from claims for damages because of bodily injury, sickness, or disease, or death of any person, including claims insured by standard personal injury liability, and from claims for injury to or destruction of tangible property, including loss of use resulting therefrom, any or all of which may arise out of or result from Contractor's operations under the Contract Documents, whether such operations be by himself or by any

Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be legally liable. This insurance shall include the types and specific coverages herein described and are written for not less than any limits of liability specified in these Contract Documents or required by law, whichever is greater. Insurance must include coverage for independent contractors, products/completed operations, contractual liability, property damage, and personal injury.

COVERAGE LIMITS - Insurance coverage limits required to be carried by the Contractor under this Section shall be as follows:

- i. Policy shall include bodily injury, property damage, and contractual liability coverage for insured contracts.
- ii. General Aggregate \$2,000,000
- iii. Products – Completed Operations Aggregate \$1,000,000
- iv. Personal and Advertising Injury \$1,000,000 any one person or organization
- v. Each Occurrence \$1,000,000
- vi. Crime insurance to provide employee dishonesty coverage on money, securities, or property other than money and securities including property in the Contractor's care, custody, or control in an amount of \$250,000.
- vii. Compliance with requirement for workers' compensation and disability benefits insurance coverage with your state laws.

The Contractor shall, prior to commencement of the Work required under the Contract, provide CESER with valid original Certificates of Insurance as evidence of the Contractor's insurance coverage in accordance with the foregoing provisions for the term of this Contract. Such certificates of insurance shall specify that the insurance provided exceeds or equals the amounts required for the types of insurance required above.

## 17. Confidential Information

Any information from CESER or CESER's clients (the states involved with this project) that is not generally publicly known or available, whether or not such information would constitute a trade secret under statutory or common law, that is disclosed to or discovered by the Contractor during the course of the Agreement, and any personally identifiable information of any Unemployment Insurance (UI) claimant to which Contractor may have access (hereinafter, "Confidential Information") shall be considered confidential. Contractor shall maintain all Confidential Information in confidence; shall employ reasonable efforts to ensure the security of the Confidential Information; and shall not disclose the Confidential Information to any third party (other than subcontractors or agents as reasonably necessary to perform their respective obligations, which have been bound to at least as stringent confidentiality obligations with respect to the Confidential Information) or use the Confidential Information except as necessary to perform the Services or produce the Work. Some of the states involved with this project may have separate nondisclosure forms that Contractor or Contractor's employees will need to sign if Contractor will have access to information that is confidential under state or federal law.

Should the Contractor receive a subpoena directing disclosure of any Confidential Information, the Contractor shall promptly inform CESER, if permitted by applicable law, and cooperate with CESER in responding to the subpoena.

#### 18. Laws and ordinances

The Contractor shall, in performing the work hereunder, comply with all applicable laws, ordinances, and regulations including Federal, State, and Municipal authorities and departments, relating to or affecting the work herein or any part thereof, and shall secure and obtain any and all permits, licenses, and consents as may be necessary in connection therein.

#### 19. Limitation of Liability

Notwithstanding any other provision of the Agreement, under no circumstances shall the liability of (i) CESER to the Contractor exceed the total amount of compensation to be paid to the Contractor or (ii) Contractor to CESER exceed the total amount of compensation paid to the Contractor.

#### 20. No waiver of conditions; Severability and Independent Covenants

Failure of CESER to insist on strict performance shall not constitute a waiver of any of the provisions of this Contract or waiver of any other default of the Contractor. If any provision or part of any provision is invalid, illegal or incapable of being enforced, by reason of any rule of law, administrative order, judicial decision, or public policy, each other provision is and remains in full force and effect. No covenant, obligation, or provision is dependent upon any other covenant, obligation, or provision, unless so expressed in this Contract.

#### 21. Public release of information

Neither party shall use the name of the other party, or the name(s) of the other party's employees, logos, trademarks, or other identifiers, without the prior written consent of the other party, except that Contractor may list this project in its list of client activities.

#### 22. Taxes

Unless prohibited by law or otherwise stated to the contrary to this Contract, the Contractor shall pay, and has not included in the price of this contract, any Federal, State or Local Sales Tax, Transportation Tax, or other similar levy which is required to be imposed upon the work or services to be performed.

#### 23. Stop Work Order

CESER may, at any time, by written order to Contractor, require Contractor to stop any or all parts of the work required by this Contract for the period of days indicated by CESER after the order is delivered to Contractor. Upon receipt of the order, Contractor shall immediately comply with its

terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. If a stop work order issued under this section is cancelled or the period of the order or any extension expires, Contractor shall resume work. The CESER Project Manager shall make the necessary adjustment in the delivery schedule or contract price, or both, and this Contract shall be amended in writing accordingly.

#### 24. Term and Termination

The Contract shall be for such term as is set forth in the Contract. The Contract may be terminated by either party prior to the end of any term on fifteen (15) days written notice.

In addition, this Contract may be terminated by either party on written notice should the other party: (a) fail to cure a material breach within ten (10) days of delivery of written notice; (b) become insolvent; (c) be the subject of a bankruptcy filing; or (d) cease doing business. Upon termination of this Contract, the Contractor shall deliver to CESER: all Work, whether in final or draft form, that has been produced as of the date of termination of this Contract; all Confidential Information (except for copies as part of its professional recordkeeping processes, subject at all times to its confidentiality obligations hereunder); and any materials or items previously provided to the Contractor by CESER. Upon receipt thereof by CESER, the Contractor shall be paid for work performed through the date of termination. In all instances of terminations, the Contractor shall use best efforts to not incur new costs and expenses after the notice of termination and shall cancel as many outstanding obligations as possible.

#### 25. Warranty of Services

The Contractor warrants and represents that:

- (a) Services under this Contract will be performed substantially in accordance with this Contract and any written modifications agreed to by the parties;
- (b) The Work shall be original to the Contractor and shall not, to Contractor's knowledge using reasonable diligence, infringe the copyright or other intellectual property rights of any party;
- (c) The Contractor possesses, and shall employ, the resources necessary to perform the Services in conformance with the Contract;
- (d) The services shall be performed, and the Work produced, in accordance with industry standards of skill, quality, diligence, professionalism, integrity, and timeliness; and
- (e) The Contractor has no interest, relationship, or bias that would present a financial, business, or other conflict with the performance of the Work or create a perception of a conflict or a lack of independence or objectivity in performing the Work, in violation of an applicable law, regulation, or professional standard. Additional warranties may be negotiated and included in specific written modifications.

#### 26. Special Damages

Neither party shall be liable to the other for consequential or indirect damages, including lost profits, or for punitive damages, arising from or related to this engagement or Contract.

## 27. Concerned Funding Agency

This Contract may be terminated by CESER without penalty or further obligation if the Concerned Funding Agency terminates, suspends, or materially reduces its funding for any reason. In the event that the Concerned Funding Agency terminates, suspends, or materially reduces its funding for any reason, CESER shall provide written notice to Contractor stating that the Contract shall be terminated. Contractor shall be compensated for all Services performed under the terms of this Contract, prior to and up to the effective date of the termination.

Additionally, the timeliness of payment by CESER under this Contract are subject to the timing of fulfillment by Concerned Funding Agency of its funding obligations to CESER.

## 28. Review and Coordination

To insure adequate review and evaluation of the Services and Work, and proper coordination among interested parties, CESER shall be kept fully informed concerning the progress of the Work and services to be performed hereunder, and, further, CESER may require the Contractor to meet with designated officials of CESER from time to time as reasonable to review the same.

## 29. Entire Agreement

The Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations, and undertakings, whether written or oral. This Contract is an integrated writing. No other verbal or written agreement or representation made by a Party at any time modifies or eliminate the text or legal effect of any provision of this Contract.

## 30. Compliance with Applicable Laws

In performing its responsibilities under this agreement, the Contractor hereby certifies and assures that it will fully comply with the following regulations, including any subsequent amendments:

i. Uniform Administrative Requirements (As Applicable):

1. 2 CFR Part 200 (Subparts A-F)

ii. Cost Principles (As Applicable):

1. 2 CFR Part 200 (Subparts A-F)

iii. Other Requirements (As Applicable):

1. 29 CFR Part 93, Lobbying Certification

2. 29 CFR Part 37, Nondiscrimination and Equal Opportunity Requirements

3. 29 CFR Part 98, Debarment and Suspension; Drug Free Workplace

## 31. Indemnification

Should one party (the “Indemnified Party”) incur or suffer any liability, damage, or expense, including reasonable attorney’s fees, in connection with the defense of a legal proceeding brought by a third party for bodily injury (including death) or damage to real or tangible personal property to the extent arising out of the negligent or other wrongful actions of the other party (the “Indemnifying Party”), then the Indemnifying Party shall indemnify, defend, and hold harmless the Indemnified Party for such liability, damage, or expense, with counsel of its own choosing, provided that the Indemnified Party shall notify the Indemnifying Party promptly upon becoming aware of such legal proceeding and reasonably cooperate with the Indemnifying Party in its defense thereof.

### 32. Survival

The following sections of these General Terms and Conditions shall survive the termination of this Contract:

- a. The section titled “Relationship.”
- b. The section titled “Arbitration and applicable law.”
- c. The section titled “Assignment and Subcontracting.”
- d. The section titled “Remedies.”
- e. The section titled “Ownership Rights.”
- f. The section titled “Confidential Information.”
- g. The section titled “Limitation of Liability.”
- h. The section titled “Public release of information.
- i. The section titled “Special Damages.”
- j. The section titled “Indemnification.”
- k. This section titled “Survival.”