

TEXAS WORKFORCE COMMISSION

NON-FINANCIAL AGREEMENT AMENDMENT

AGENCY-BOARD AGREEMENT FOR AN INTEGRATED WORKFORCE SYSTEM					
TWC Contract Number	2316ABA000	Amendment Number	1	Effective Date	October 01, 2016
Board Information					
Name	Lower Rio Grande Valley WDB dba Workforce Solutions				
Mailing Address	3101 W. Business 83				
City/State/Zip	McAllen, TX 78501				
Telephone Number	956-928-5000, ext 3736				
D-U-N-S Number	134108310				
Fiscal Agent Information (if applicable)					
Name					
Mailing Address					
City/State/Zip					
Telephone Number					
Remarks					
This amendment is contingent on the Board's and its Fiscal Agent's (if applicable) acceptance of and compliance with the terms and conditions of this Non-Financial Agreement Amendment and any referenced attachments.					
Amendment Detail					
Contract Period					
<input type="checkbox"/> The Contract Period is amended as follows: Current End Date: _____ Amended End Date: _____					
<input checked="" type="checkbox"/> There are no changes to the Contract Period pursuant to this amendment.					
Terms and Conditions					
<input checked="" type="checkbox"/> The Terms and Conditions are amended as follows: <ul style="list-style-type: none"> • Revise Terms and Conditions– Table of Contents – Add Section 27, Coordination with Workforce Vocational Rehabilitation Service, changes are in bold; and • Sections 1.6, 5.2, 19.3, 19.4, 25.6.3, 25.7.2, 25.7.3, 25.7.4, 27 and 27.1 – 27.3, changes are in bold. 					
<input type="checkbox"/> There are no changes to the Terms and Conditions of this grant award pursuant to this amendment.					
Attachment A - Safeguards For TWC Information					
<input checked="" type="checkbox"/> Attachment A - Safeguards For TWC Information is amended as follows: <ul style="list-style-type: none"> • Revised Attachment A, Section 22, changes are in bold. 					
<input type="checkbox"/> There are no changes to Attachment A - Safeguards For TWC Information pursuant to this amendment.					
Attachment B – Certifications					
<input type="checkbox"/> Attachment B – Certifications is amended as follows:					
<input checked="" type="checkbox"/> There are no changes to Attachment B – Certifications pursuant to this amendment.					

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**AGENCY–BOARD AGREEMENT
FOR AN INTEGRATED WORKFORCE SYSTEM**

SECTION 1 - LEGAL AUTHORITY

The Texas Workforce Commission (the “Agency”) is the designated Agency of this state to implement:

- 1.1 the Workforce Innovation and Opportunity Act (WIOA), § 2 *et seq.*, Public Law (Pub.L) 113-128, 29 U.S. Code (U.S.C.) § 3101 *et seq.*;
- 1.2 the Wagner-Peyser Act, 29 U.S.C. § 49 *et seq.*;
- 1.3 portions of the Temporary Assistance for Needy Families (TANF) programs in the Social Security Act, 42 U.S.C. § 601 *et seq.*;
- 1.4 the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), 42 U.S.C. § 601 *et seq.*;
- 1.5 Texas Government Code § 2308: **and**
- 1.6 **the Vocational Rehabilitation Program, pursuant to the authority and in compliance with the passage of Senate Bill 208 of the 84th Legislature, Regular Session (2015).**

The Agency is responsible, under these legal authorities, for administering an integrated workforce development system, including the unemployment compensation insurance program, job training, employment, and employment-related educational programs, including the workforce development programs consolidated under the authority of Texas Labor Code § 302.021. Pursuant to Texas Labor Code § 302.002(b), the Agency has the authority to enter into contracts and administer programs.

Texas Labor Code § 302.062, requires that the Agency provide funds to the local workforce development areas (LWDAs) in which local workforce development boards have been certified and local plans approved by the governor, through a block grant process, for workforce training and employment services, unless superseded by federal law.

SECTION 2 - PURPOSE

The purpose of this Agency–Board Agreement (ABA or this “Agreement”) is to establish the nature of the working relationship between the Agency and the Local Workforce Development Board (the “Board”) to include the goals, responsibilities and obligations of the Parties with respect to the administration of these programs, or other service delivery programs, for grant awards or program contracts for which funds are allocated or awarded by the Agency to the Board.

SECTION 3 - PARTNERSHIP GOALS

The Board and the Agency are committed to a collaborative relationship aimed at:

- 3.1 Promoting and supporting an effective workforce system responsive to local economic conditions and labor market needs that offers Texas employers, individuals and communities the opportunity to achieve and sustain economic prosperity.
- 3.2 Building the Texas Workforce Solutions Network in a manner consistent with federal and state laws, regulations, and system objectives, whereby the Agency administers, and the Board manages and oversees the implementation of workforce services.
- 3.3 Assisting Texans' transition from public assistance programs to productive members of the workforce, in a manner consistent with meeting employers' needs.

SECTION 4 - AGENCY PERFORMANCE

- 4.1 The Agency agrees to:
 - 4.1.1 Make a specific Grant Award, or enter into a specific program contract, for each program of services to be designed and managed by the Board. Hereinafter, all Grant Awards, program services contracts, and program contracts will be referred to as "grants".
 - 4.1.2 Pay or reimburse the Board, in a timely manner, for authorized expenses incurred or services provided in accordance with specific grants upon receipt of proper supporting documentation as specified in such grants.
 - 4.1.3 Provide technical assistance to the Board as requested by the Board or deemed necessary by the Agency to provide for the effective and efficient administration of programs, to address any monitoring deficiencies and assure quality delivery of services.
 - 4.1.4 Take actions it deems necessary to enhance the efficiency and effectiveness of its grant and contract administration processes.
- 4.2 In consideration of the Board's full and satisfactory performance of specified services in the grant, the Agency shall be liable to the Board in accordance with the terms and limitations established within the attachments to this Agreement or any grant.

SECTION 5 - BOARD PERFORMANCE

- 5.1 The Board represents and guarantees that it possesses the legal authority to enter into this Agreement and in consideration of the commitments set forth in ABA, Section 4, Agency Performance, agrees to:
 - 5.1.1 Conduct its activities and meetings under this Agreement, in compliance with the provisions of the Texas Open Meetings Act, Texas Government Code, Chapter 551, and the Texas Public Information Act, Texas Government Code, Chapter 552.
 - 5.1.2 Design service delivery systems for the provision of services in accordance with the program-specific requirements set forth in any grant entered into with the Agency. Such systems shall be developed in compliance with the terms of any such grant and all applicable federal and state laws, regulations, and Agency rules.
 - 5.1.3 Implement and oversee an integrated workforce system and services in compliance with:
 - 5.1.3.1 the legal authorities cited in ABA, Section 1, Legal Authorities;
 - 5.1.3.2 the provisions under any grant awarded by the Agency, or used as required match, including development and implementation of a comprehensive risk-based monitoring system, a performance accountability monitoring system, and an outcome-based evaluation system;
 - 5.1.3.3 the approved Integrated Board Plan and modifications or amendments; and

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- 5.1.3.4 Agency policies and procedures applicable to Board program activities set forth in Agency rules and Workforce Development (WD) Letters.
- 5.1.4 Develop and implement policies, procedures and standards for reporting financial, programmatic, and customer information in the required timeframes and using the systems and formats specified by the Agency.
- 5.1.5 Ensure that priority of service as described in 40 TAC § 801.31 is provided to:
 - 5.1.5.1 Eligible veterans as defined in 40 TAC § 801.23(2); and
 - 5.1.5.2 Eligible foster youth as defined in 40 TAC § 801.23(1).
- 5.1.6 Ensure Workforce Solutions Offices:
 - 5.1.6.1 Are established in compliance with Agency rules in 40 Texas Administrative Code (TAC), Chapter 801, Subchapter B; and
 - 5.1.6.2 That the public throughout the LWDA has access to local workforce development services as specified in 40 TAC § 801.22 through:
 - 5.1.6.2.1 A Workforce Solutions Office, at a minimum from Monday through Friday between the hours of 8:00 a.m. to 5:00 p.m. in the local office's respective time zone, including state or federal holidays on which the Agency is required by law to be open, and at such other times as the Board deems necessary to meet local need for services; or
 - 5.1.6.2.2 A virtual, Internet-based Workforce Solutions Office.
 - 5.1.6.2.3 In the event a local Workforce Solutions Office needs to be temporarily closed due to inclement weather or for repairs, the Board shall post the temporary closure information on the Board website and send an email notification to the Agency's Workforce & Board Support department at Board.Relations@twc.state.tx.us.
- 5.1.7 Establish contracts and memoranda of understanding that document partnerships, relationships, duties, and cost sharing with Workforce Solutions Offices partners, as required by 40 TAC § 801.27 and WIOA § 121, 29 U.S.C. § 3151.
- 5.1.8 Comply with all responsibilities and duties enumerated in Texas Government Code, Chapter 2308, including but not limited to:
 - 5.1.8.1 Developing and adopting an annual integrated workforce services budget, as required by Texas Government Code § 2308.262 and in accordance with the limitations of the then-current General Appropriations Act;
 - 5.1.8.2 Operational planning, administration, and oversight provisions in Texas Government Code § 2308.302 requiring effective outcomes of all workforce training and services funded through the Agency; and
 - 5.1.8.3 Service provider limitations in Texas Government Code § 2308.3121 requiring separation of one-stop and developmental services except as approved by the Agency pursuant to 40 TAC § 802.44.
- 5.1.9 Comply with service provider contracting limitations as approved by the Agency pursuant to 40 TAC § 802.22 and WD Letter 31-14.
- 5.1.10 Comply with all Agency rules and regulations pertaining to conciliation, good cause determinations, and hearings concerning recipients of services, and abide by the decisions rendered by the Agency in such actions, subject to any statutory right of appeal.
- 5.1.11 Comply, whenever applicable, with appropriate federal and state licensing or certification requirements.
- 5.1.12 Comply with Attachment B, Certifications, incorporated herein and made part of this Agreement.
- 5.1.13 Disclose that the programs or projects are financed in whole or in part by federal and state funds when issuing requests for proposals and bid solicitations for projects or programs funded in whole or in part with Agency funds.
- 5.1.14 Notify the Agency's Workforce & Board Support department at Board.Relations@twc.state.tx.us:
 - 5.1.14.1 No later than forty-five (45) calendar days prior to the occurrence of closure, relocation, or opening, or a change in service level of a Workforce Solutions Office.

- 5.1.14.1.1 When the closure or move will affect state employees or will leave a county without in-county services, the Board shall notify their local elected official(s). The Board shall follow the guidance provided in any WD Letter and subsequent issuances, and will provide timely written notification to local elected official(s).
 - 5.1.14.1.2 To ensure that public directories are up to date, the Board shall submit the Office Directory Information Form (Y-9) located on the TWC Intranet to Directory Services no later than two (2) weeks in advance of the closing, moving, or opening of a satellite office or Workforce Solutions Office.
 - 5.1.14.1.3 To ensure that public directories are up to date, the Board shall submit the Legislative Notification of Field Office Closure, Move, or Opening (Form GR-10) located on the TWC Intranet to Directory Services no later than 45 calendar days in advance of the closing, move, or opening of a satellite office or Workforce Solutions Office. Form GR-10, Legislative Notification of Field Office Closure, Move, or Opening is located at http://intra.twc.state.tx.us/intranet/gl/html/general_forms.html.
 - 5.1.14.2 No later than thirty (30) calendar days prior to the occurrence of any change in the Board's name, governing structure or organization, Employer Identification Number (EIN), Dun and Bradstreet Data Universal Numbering System (DUNS) number, and of any voluntary or involuntary actions in bankruptcy.
- 5.2 The Board shall develop and maintain a Continuity of Operations (**COOP**) Plan, which includes a Pandemic Influenza Plan. **The Board's COOP Plan** will align with the TWC **COOP Plan** to ensure an efficient and effective response, recovery, and resumption of critical business operations following an event.
- 5.3 The Board's COOP shall ensure the Board's ability to support Agency involvement in the State of Texas Emergency Management Plan (the "State Plan"). State Plan provisions, as identified in Annexes H, M, and T which specifically address Agency and Board involvement are:
- 5.3.1 Recovery: Implementation of post-disaster emergency recovery activities, processing requests for disaster emergency assistance, and implementing state administered disaster emergency assistance programs when authorized.
 - 5.3.2 Resource Support: Recruit, screen, and hire manpower needed to support disaster response and recovery operations.
 - 5.3.3 Donations Management: Select and train staff to assist the donations management system agencies in the temporary employment of personnel to work in the donations management program. Such staff will screen and identify personnel qualified to work in the various facilities and functions of the donations management program.
 - 5.3.4 Pandemic Influenza Response: Assist in disseminating education and awareness information to Texas employers on pandemic planning and response.
- 5.4 The Board shall not award a contract funded through a grant under this Agreement to any person or entity:
- 5.4.1 Debarred or suspended pursuant to Executive Order 12549; or
 - 5.4.2 Barred from participating in State contracts pursuant to Texas Government Code § 2155.077, as implemented by 34 TAC §§ 20.105 – 20.107; or
 - 5.4.3 Found on the Excluded Persons List System (EPLS) in compliance with Executive Order 13224 (Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as implemented by 29 C.F.R., Ch. XII, Part 1471; and
 - 5.4.4 Shall conduct a search, prior to awarding or renewing a contract, for persons or entities excluded from doing business:
 - 5.4.4.1 at the state level through the Texas Comptroller for Public Accounts website at http://www.window.state.tx.us/procurement/prog/vendor_performance/debarred/; and

5.4.4.2 at the federal level at the EPLS website at <http://epls.gov>, to be prospectively implemented as the System for Award Management (SAM) accessible at <http://sam.gov>.

SECTION 6 - ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES

- 6.1 All business relationships (grants) between the Board and the Agency shall conform to the administrative requirements and cost principles found in:
- 6.1.1 any specific term or condition within a specific grant;
 - 6.1.2 Uniform Administrative Requirement, Cost Principles, and Audit Requirements for Federal Awards (OMB Uniform Guidance (UG), 2 Code of Federal Regulations (C.F.R.) Part 200) and, the Uniform Grant Management Standards (UGMS);
 - 6.1.3 the Agency's Financial Manual for Grants and Contracts (FMGC); and
 - 6.1.4 any directives specified by Agency issuances, including, but not limited to, directives issued by WD Letters, except as otherwise specifically authorized by the Agency in writing.
- 6.2 In the event of a conflict between such administrative requirements and cost principles and the terms and conditions of this Agreement, precedence shall be given to such administrative requirements and cost principles.

SECTION 7 - EXPENDITURE LIMITATIONS

- 7.1 The Agency is liable to the Board in an amount equal to, but not in excess of, the lesser of the amount of the grant or the actual allowable costs incurred by the Board in rendering the performance specified in the Statements of Work of any grant and any attachments subject to the following provisions:
- 7.1.1 The limitations established within the grant's funding summary.
 - 7.1.2 The Agency receives a verified statement, of obligations and accrued expenditures, that is prepared in accordance with the requirements set forth by the Agency, in WD Letters, and/or other Agency issuances.
 - 7.1.3 The Agency shall not be liable for expenditures made in violation of the legal authorities cited in a grant, or any other law or regulation applicable to a specific service performed under a grant.
 - 7.1.4 The Agency shall not be liable to the Board for costs incurred or performances rendered by the Board or its subrecipients or subcontractors before commencement of a grant or after termination of a grant, other than allowable administrative costs unless approved in writing by an authorized representative of the Agency.
 - 7.1.5 The Agency shall not be liable for any costs incurred by the Board in the performance of a grant which have not been billed to the Agency within the contract closeout period.
- 7.2 Notwithstanding any other provisions of a grant, the Parties hereto understand and agree that the Agency's obligations for costs incurred or performances rendered by the Board under a grant are contingent upon receipt of adequate funds from federal and state sources to meet the Agency's liabilities thereunder. The grant is subject to revision upon actual receipt of funds from federal or state sources.
- 7.3 The Board agrees that all funds provided through a grant, including funds expended under subawards or subcontracts, shall be expended for authorized activities and that no expenditures will have as their objective the funding of sectarian worship, instruction, or proselytization. This provision shall not be interpreted to prohibit the Board from subcontracting for goods or services with any religious institution or entity.
- 7.4 Responsibility for disallowed costs and other liabilities under any specific grant between the Board and the Agency will be as follows:
- 7.4.1 First Priority: The Board shall recover funds from the service provider(s) incurring the liability and utilize such funds to retire the liability to the Agency.

- 7.4.2 Second Priority: The Board shall recover funds from an insurance carrier or bond issuer and utilize such funds to retire the liability to the Agency.
- 7.4.3 Third Priority: The Board shall use available stand-in costs to resolve the disallowed costs or other liability to the Agency.
- 7.5 The Board understands and agrees that it shall repay to the Agency any funds determined to be expended in violation of the terms and conditions of a grant subject to the following:
 - 7.5.1 The Board shall be liable for such funds and shall repay such funds even if a Board's subrecipients or subcontractors made the improper expenditure.
 - 7.5.2 All repayments made by the Board shall be from non-federal and non-state funds.
 - 7.5.3 Failure to repay such funds within thirty (30) calendar days after demand may result in legal action to recover such funds and/or additional costs, including allowable interest.

SECTION 8 - OBLIGATION AND DEOBLIGATION OF FUNDS

The term "Commission" when used in this Section, shall have the following meaning: the body of governance of the Agency composed of three (3) members appointed by the Governor as established under Texas Labor Code § 301.002 that includes one (1) representative of labor, one (1) representative of employers, and one (1) representative of the public.

Notwithstanding the provisions of ABA, Section 14, Changes and Amendments, the following provisions apply to the obligation and deobligation of funds under a grant:

- 8.1 The Board agrees that the Commission may deobligate funds for failure to achieve expenditure benchmarks as established within the grant or Agency rule.
- 8.2 The Commission shall not be liable to the Board for any excess or erroneous funding obligations, and retains the right to unilaterally deobligate such funds.
- 8.3 The Commission, at their sole discretion, may obligate additional funds under a grant or deobligate funds previously obligated under a grant.
- 8.4 The Agency shall provide notification to the Board in the form of a posted agenda for a public meeting consistent with Agency policy for open meetings when considering the additional obligation or deobligation of funds to the LWDA. Commission actions to obligate or deobligate funds shall be implemented by the Agency through a grant amendment, unless otherwise provided in Section 14.6 of this Agreement.
- 8.5 For a voluntary deobligation of funds allocated under Agency rule or voluntary reduction of funds distributed by Commission action, the Board shall submit a Contract Action Request. The Board's request shall be submitted electronically to CAR@twc.state.tx.us and shall include the Grant Award number, the amount, and a justification for the action requested.

SECTION 9 - FINANCIAL REPORTING

- 9.1 The Board shall have and require its subrecipients or subcontractors to have financial management systems that provide for accurate, current, and complete disclosure of the financial results of each grant, and records that adequately identify the source and application of funds for each Grant Award and subawards, including information pertaining to awards, authorizations, obligations, unobligated balances, assets (including cash), expenditures, income, and interest.

- 9.2 The Board shall electronically submit the following, through the Cash Draw and Expenditure Reporting system, according to the instructions specified in 40 TAC §§ 800.52 and 800.72, WD Letters and other Agency issuances:
- 9.2.1 An accurate monthly financial report, including accrued expenditures and obligations; and
 - 9.2.2 A Contract Closeout Settlement Package.
- 9.3 The Board shall comply with the reporting requirements established by the Federal Funding Accountability and Transparency Act (FFATA) of 2006, Pub. L. 109-282, as amended by Pub.L. 110-252, Title VI, § 6202(a), June 3, 2008, according to the instructions specified in WD Letter 29-12 and subsequent issuances.

SECTION 10 - BONDING REQUIREMENTS

The Board shall comply with the following bonding requirements and the Board Contracting Guidelines at 40 TAC § 802.21 regarding any grants awarded under this Agreement:

- 10.1 The funds provided by any grant shall be included in coverage provided by a fidelity bond that indemnifies the Agency against loss arising from a fraudulent or dishonest act of the Board's officers and employees holding positions of fiduciary trust.
- 10.2 The Board shall obtain a bond sufficient to cover the largest cumulative amount of all cash requests submitted by the Board on any given day or the cumulative amount of funds on hand at any given point. Under no circumstances shall the Agency disburse to a Board an amount of cash that exceeds the bond amount. This determination shall be made based on the cumulative amounts drawn by the Board during any consecutive three (3) day period for single or multiple funding sources.
- 10.3 The bond shall be executed by a corporate surety or sureties holding certificates of authority to do business in the State of Texas; and acceptable to the Agency.
- 10.4 If a surety upon a bond loses its authority to do business in the State of Texas, the bond is cancelled, reduced or otherwise amended, the Board shall immediately notify the Agency and provide a replacement bond adequate to cover the terms and conditions of this section. Until such time that an adequate replacement bond is secured by the insurer and provided to the Agency, no further disbursements shall be made to the Board.
- 10.5 The Board shall be the insured entity and the Agency shall be the assigned certificate holder. A copy of the bond shall be forwarded by mail, fax, or email to:

Texas Workforce Commission
Financial Operations - Payables
101 East 15th Street, Room 446
Austin, Texas 78778-0001

Email: appo@twc.state.tx.us
Fax Number: (512) 936-3299

SECTION 11 - SANCTIONS AND PENALTIES

- 11.1 Failure of the Board to comply with any provision of the ABA or any grant, whether stated in a Federal or State statute or regulation, State Methods of Administration developed under 29 C.F.R. § 37.54, Agency rules, an assurance, a certification, an application, or Agency policies or procedures referenced in a grant, may subject the Board to sanctions and enforcement or remedial measures appropriate to the circumstances including:
- 11.1.1 temporary withholding of payments;
 - 11.1.2 disallowance of costs;
 - 11.1.3 whole or partial suspension of any grant;
 - 11.1.4 withholding of further awards; or
 - 11.1.5 other remedies that may be legally available.
- 11.2 Any sanctions or penalties imposed shall conform to rules set forth at 40 TAC, Chapter 802, Subchapter G or other remedies allowed by state and federal laws and the Agency rules.
- 11.3 The Board acknowledges and accepts that special conditions may be imposed by the Agency, and certain enforcement remedies exercised (as set forth within the OMB UG), if the Agency determines that the Board is a "high risk" grantee by meeting one (1) or more of the following:
- 11.3.1 has committed a sanctionable act pursuant to 40 TAC, Chapter 802, Subchapter G;
 - 11.3.2 has a history of unsatisfactory performance;
 - 11.3.3 is not financially stable;
 - 11.3.4 has a management system which does not meet the standards for managements standards set forth in the OMB UG;
 - 11.3.5 has not conformed to terms and conditions of previous grants; or
 - 11.3.6 is otherwise not responsible.
- 11.4 If the Agency determines that a grant will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award. Special conditions or restrictions may include but shall not be limited to:
- 11.4.1 payment on a reimbursement basis;
 - 11.4.2 withholding authority to proceed to the next phase until receipt of evidence of acceptable performance;
 - 11.4.3 additional and more detailed financial reporting;
 - 11.4.4 additional project monitoring;
 - 11.4.5 requiring the Board to obtain technical or management assistance and implement corrective actions;
 - 11.4.6 establishing additional prior approvals; or
 - 11.4.7 other conditions or restrictions appropriate to the circumstances.

SECTION 12 - TERMINATION

- 12.1 This Agreement, or any additional grant, may be terminated in whole or in part, by the Agency whenever it determines that such termination is in its best interests or the interests of the LWDA.
- 12.2 This Agreement may be terminated in whole by the Board, in collaboration with the Chief Elected Official, with sixty (60) calendar days advance notice, whenever it determines that such termination is in its best interest or the interests of the LWDA.
- 12.3 When justified, either party may terminate this Agreement for cause, pending completion of any reports or audits required by the Agency. Such termination shall be effective upon receipt of written notification of termination, provided no less than sixty (60) calendar days in advance.

- 12.4 Either party may appeal the other party's decision to terminate this Agreement for convenience or cause.
- 12.5 Termination of this Agreement does not release the Board from on-going responsibilities for the following sections of the ABA:
- 12.5.1 Section 7.4 - Responsibility for Disallowed Costs;
 - 12.5.2 Section 13 - Record Retention and Access to Records;
 - 12.5.3 Section 17 - Monitoring, Audits, and Evaluations;
 - 12.5.4 Section 19 - Preventing and Reporting Fraud, Waste, and Program Abuse;
 - 12.5.5 Section 22 - Property; and
 - 12.5.6 Section 24 - Confidentiality of Records.

SECTION 13 - RECORD RETENTION AND ACCESS TO RECORDS

- 13.1 The Board and its subrecipients and subcontractors shall comply with requirements for custody and retention of records as set forth in OMB UG, UGMS, FMGC, or the grant.
- 13.2 The Board and its subrecipients and subcontractors shall grant access and the right to examine, copy or mechanically reproduce, all reports, books, papers, minutes, automated data systems, and other documents (collectively referred to as "records") pertaining to any grant awarded under this Agreement from Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m. in the local time zone, excluding state or federal holidays. In the event of suspected fraud, malfeasance, or program abuse, Agency investigators may retain the original records and leave the mechanically reproduced copies in place of the original records.
- 13.3 Such rights to access shall continue as long as the Board retains the records.
- 13.4 Such rights of access and examination are granted to the following entities, as applicable:
- 13.4.1 United States Department of Labor;
 - 13.4.2 United States Department of Health and Human Services;
 - 13.4.3 United States Department of Agriculture;
 - 13.4.4 Comptroller General of the United States;
 - 13.4.5 General Accounting Office;
 - 13.4.6 Texas State Auditor's Office;
 - 13.4.7 Office of the Attorney General of Texas;
 - 13.4.8 The Agency;
 - 13.4.9 other state and federal auditing agencies; or
 - 13.4.10 any duly authorized representative of the above named agencies as deemed appropriate by the Agency.
- 13.5 The Agency, and any of its authorized representatives, shall have timely and reasonable access to all Board records and personnel related to this Agreement and any grant awarded to the Board under this Agreement for the purpose of inspection, investigation, monitoring, auditing, evaluation, interview, and discussion.
- 13.6 Authorized representatives include, but are not limited to:
- 13.6.1 Agency designated employees or contractors;
 - 13.6.2 Employees or contractors of the Texas State Auditor's Office;
 - 13.6.3 Employees or contractors of the Office of the Comptroller of Public Accounts;
 - 13.6.4 Employees or contractors of the Office of the Attorney General of Texas;
 - 13.6.5 Employees or contractors of the United States Department of Labor, United States Department of Health and Human Services, United States Department of Agriculture; or
 - 13.6.6 Employees or contractors of any other federal or state agency deemed appropriate by the Agency.

- 13.7 If any records are held by a Board subcontractor, neither the Board nor the Agency shall be responsible for the costs of reproducing copies of the subcontractor's records.

SECTION 14 - CHANGES AND AMENDMENTS

- 14.1 This Agreement, including all documents or subsequent Agreements referenced herein, is the entire Agreement between the Parties. All oral or written Agreements between the Parties hereto relating to the subject matter of this Agreement made before the execution of this Agreement have been reduced to writing and are contained or referenced herein.
- 14.2 Except as specifically provided by this Agreement, alterations, additions, deletions, or extensions to the terms of this Agreement shall be modified in writing and executed by both Parties. Any other attempted changes, including oral modifications, or other modifications of any type, shall be invalid.
- 14.3 Any alterations, additions, or deletions to the terms of this Agreement which are required by changes in federal or state law or by regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or by regulation.
- 14.4 To ensure effective performance under any grant, both Parties agree that the Agency may amend performance requirements during the grant period, to interpret or clarify a change in federal or state law, rules or regulations, by issuing formal directives to establish or clarify such performance requirements.
- 14.4.1 After a period of no less than thirty (30) calendar days subsequent to written notice (unless more rapid implementation is required by law) such formal directives shall have the effect of qualifying the terms of the grant and shall be binding upon the Board and the Agency as if written herein.
- 14.4.2 Such Agency directives shall not alter the terms of the grant so as to relieve the Agency of any obligation specified in the grant to reimburse the Board for costs properly incurred prior to the effective date of such formal directives.
- 14.5 The Agency reserves the sole option to renew or extend a grant, after the initial period. Such renewal will be based upon a compliance review, the Agency's continuing need for the services, and the availability of funds. The Board may submit for Agency consideration a written request for a renewal or extension. Such request shall be received by the Agency no later than forty-five (45) calendar days prior to the expiration of a grant.
- 14.6 The Agency may unilaterally amend grants that have been funded pursuant to 40 TAC, Chapter 800, Subchapter B (formula grants) for any Commission approved action. Unilateral Amendments for the following formula grants: Employment Services (ES), TANF, WIOA, Supplemental Nutrition Assistance Program (SNAP), Child Care Match (CCM), and Child Care Formula (CCF) will be signed by the Agency:
- 14.6.1 when the Commission has approved deobligation of funds, additional funds, redistribution of funds, or made changes to program specific requirements; or
- 14.6.2 to correct the following errors: typographical errors, incorrect legal citations, cross-reference errors, and/or grammatical errors.

SECTION 15 - RIGHTS IN DATA, PRODUCTS, OR INVENTIONS

- 15.1 The Agency may reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, by or on behalf of the Agency any data, product or invention developed under any grant or purchased or developed with funds from any grant awarded by the Agency to the Board.

15.2 Excluding copyrighted, licensed and public domain software, the Board grants to the Agency and its designated representatives, unlimited rights to any data, databases or data processing programs first produced, developed, or delivered under a grant awarded by the Agency to the Board. Such data includes recorded information regardless of form or media.

15.3 Upon termination of any grant under this Agreement, whether for cause or convenience, all finished or unfinished documents, records, reports, photographs, etc., purchased or developed with funds from a grant awarded by the Agency to the Board shall, at the option of the Agency, become the property of the Agency.

In the event of such termination the Board may be requested to transfer title and deliver to the Agency any property or products the Board has acquired or produced in performance of the award.

15.4 All data and rights necessary to fulfill the Board's obligations to the Agency under this Agreement shall be secured and obtained from Board subrecipients and subcontractors for any data or rights purchased or developed with funds from the grant.

If a subrecipient or subcontractor refuses to accept terms affording the Agency such rights, the Board shall promptly bring such refusal to the attention of the Board's designated Agency Contract Manager.

15.5 The Agency and its officers, agents and employees are indemnified against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. § 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property produced or developed with funds from a grant from the Agency to the Board, or out of the use or disposal by or for the account of the Agency of such supplies or construction work.

15.6 The Agency retains a non-exclusive, non-transferable, irrevocable, paid-up license to practice or have practiced the subject invention throughout the world with respect to any invention purchased or developed with funds from any grant from the Agency to the Board in which the Board retains title.

SECTION 16 - SUBRECIPIENTS AND SUBCONTRACTORS

The Board shall:

16.1 Be responsible for subrecipients' and subcontractors' performance related to any provision of this Agreement or any associated grant. For the purposes of this section, the terms "subrecipient" and "subcontractor" shall have the meaning provided in 40 TAC § 802.2(15).

16.2 Require all subrecipients and subcontractors to comply with all requirements, as covered in this Agreement or any associated grant, specifically the ABA provisions in these Terms and Conditions relating to:

16.2.1 administrative requirements and cost principles in Section 6;

16.2.2 expenditure limitations in Section 7;

16.2.3 record retention and access to records in Section 13;

16.2.4 rights in data, products or inventions in Section 15;

16.2.5 monitoring, audits, and evaluations, in Section 17;

16.2.6 preventing and reporting fraud, waste, and program abuse in Section 19;

16.2.7 preventing conflict of interest, in Section 20;

16.2.8 non-discrimination and equal opportunity in Section 21;

16.2.9 property in Section 22;

16.2.10 any breach of the confidentiality provisions in Section 24;

- 16.2.11 confidentiality of records in Section 24;
 - 16.2.12 security management provisions in Section 25; and
 - 16.2.13 Attachment A, Safeguards for TWC Information.
- 16.3 Not exclude a charitable or faith-based organization which is eligible to be a subrecipient or subcontractor to the Board on the same basis as any other private organization. As a subrecipient or subcontractor under this Agreement, such an organization retains its control over the definition, development, practice and expression of its charitable or religious beliefs, except as provided by federal law.
- 16.4 Make a reasonable effort to meet the state goal on subcontracts and supplier contracts to Historically Underutilized Businesses certified by the State of Texas, as defined in Texas Government Code § 2161.001, including any certified women or minority owned businesses or enterprises.
- 16.5 Assure that subrecipients and subcontractors carry “errors and omissions” insurance, or establishes a self-funded equivalent, as well as other forms of insurance required by state or federal law or regulation.
- 16.6 Require subrecipients and subcontractors to cooperate with the Board to assist with the orderly transfer of the services, functions, and operations provided by the subrecipient or subcontractor to another service provider designated by the Board to include termination and transition requirements in all subcontracts and subawards, including but not limited to, the following:
- 16.6.1 Developing and implementing a reasonable transition plan designed to achieve an efficient transfer of responsibility to another entity, in a timely manner and to cooperate fully throughout the post-termination period until such transition is complete;
 - 16.6.2 Cooperating with the Board to identify subrecipient and subcontractor personnel critical to the transfer efforts;
 - 16.6.3 Ensuring the cooperation and availability of its key employees during the transfer process;
 - 16.6.4 Exercising its best efforts to ensure that the Board obtains appropriate access to third-party services, hardware, software, personnel, and facilities required to perform an orderly termination;
 - 16.6.5 Exercising reasonable efforts to affect a transfer of license or assignment of agreement(s) for any software or third-party services utilized by all subrecipients and subcontractors to provide services to the Board;
 - 16.6.6 Providing the Board or its designee all information necessary to transition to another subrecipient or subcontractor without interruption of services;
 - 16.6.7 Providing full disclosure to the Board of the equipment, software, and third-party supplier services required to perform services previously performed by a subrecipient or subcontractor within sixty (60) calendar days of any Board request for same;
 - 16.6.8 Providing to the Board or its designee in writing, to the extent available, applicable requirements, standards, policies, operating procedures, and other documentation relating to the affected services and necessary access to any systems and sites for which the affected services were provided;
 - 16.6.9 Providing training in the performance of the affected services to the Board or its designee, upon the Board’s request, in the event of the expiration or termination of all or part of the services being provided under the subcontract or subaward; and
 - 16.6.10 Answering questions from the Board or the Agency for a minimum of six (6) months after expiration or termination of the subcontract or subaward.

SECTION 17 - MONITORING, AUDITS, AND EVALUATIONS

- 17.1 The Board and the Agency shall cooperate in any audit or examination conducted pursuant to this section.
- 17.2 The Board shall develop and maintain a subcontractor monitoring system acceptable to the Agency to monitor any service subcontract it awards from grants under this Agreement.
- Complete records of all monitoring performed by the Board shall be maintained and made available to the Agency during such subcontract performance periods and for as long thereafter as an unresolved deficiency may require.
- 17.3 The Agency reserves the right to conduct, or cause to be conducted, an independent audit of all funds received by the Board under any grants. Such an audit may be performed by the local government audit staff, a certified public accounting firm, or other auditors as designated by the Agency and shall be conducted in accordance with applicable federal rules and regulations, grant guidelines, and established professional standards and practices.
- 17.4 The Agency reserves the right to conduct or cause a designee to conduct monitoring and evaluation studies of the performance of the Board or of any Board subrecipients and subcontractors for services rendered under grants or Board subawards awarded under this Agreement.
- The Agency retains the right to perform such evaluation studies that it determines necessary and will report preliminary results to the Board and any subrecipient or subcontractor before the evaluation is concluded and the final results are made a matter of record.
- 17.5 The Board shall supply to the Agency an audit that is in compliance with the Single Audit Act of 1984, as amended July 1996, 31 U.S.C., Chapter 75, OMB UG, and the State of Texas Single Audit Circular (UGMS, Part IV), as specified within any grant awarded under this Agreement and in effect at the time costs were incurred.
- 17.6 If any subrecipient or subcontractor to the Board under any grant establishes a separate account for the government funds provided through that grant, then only the services and activities supported by those funds will be subject to audit by the Agency or its duly authorized representatives.
- 17.7 The Board understands that acceptance of funds under the grant, acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to audit or investigate the expenditure of funds under the grant, or any subcontract. The Board further agrees to cooperate fully with the State Auditor's Office or its successor, including providing all records requested. The Board will ensure that this clause concerning the authority to audit funds received indirectly by any subrecipients or subcontractors through the Board and the requirement to cooperate is included in any subawards.

SECTION 18 - APPEALS AND DISPUTE RESOLUTION

- 18.1 Any sanctions or penalties imposed under any grant may be appealed pursuant to the appeals provisions at 40 TAC § 802.142.
- 18.2 Except as otherwise provided in this Agreement or by law, the Board has the right to appeal any dispute arising under or related to this Agreement or any grant with the Agency, which is not disposed of by agreement, by pursuing any statutory right or remedy which the Parties may have.
- 18.3 To the extent applicable under state and federal law, a Board's claim for breach that the Parties cannot resolve in the ordinary course of business shall be submitted to the dispute resolution process provided for in 40 TAC, Chapter 800, Subchapter K, as further described in this section.

- 18.3.1 To initiate the process, the Board shall submit written notice as specified by 40 TAC § 800.453, as well as other supporting documentation or other tangible evidence to facilitate the Agency's evaluation of the Board's claim.
- 18.3.2 Neither the award of a grant by the Agency nor any other conduct of any representative of the Agency relating to a grant, or the dispute resolution process described herein shall be considered a waiver of sovereign immunity to suit.
- 18.4 Neither the occurrence of an event nor the pending of a claim constitutes grounds for the suspension of performance by the Board in whole or in part.

SECTION 19 - PREVENTING AND REPORTING FRAUD, WASTE, AND PROGRAM ABUSE

- 19.1 The Board shall establish and implement procedures for preventing, reporting, investigating, and taking appropriate legal and/or administrative action concerning any fraud, waste, program abuse, possible illegal expenditures, unlawful activity, violations of law, or Agency rules, policies, and procedures occurring under any grant awarded by the Agency to the Board.
- 19.2 The Board shall require any member of the Board, Board staff, or Board subcontractor staff having knowledge of suspected fraud, waste, program abuse, possible illegal expenditures, unlawful activity, violations of law or Agency rules, policies, and procedures occurring under any grant awarded by the Agency to the Board to report such information to the Agency's Office of Investigations no later than five (5) business days from the date of discovery of such act.
- 19.3 **When suspected activity involves a TWC employee, Board staff or Board Contractor staff, send a RID-32, Incident Report Form to the Office of Investigations by email to IncidentReports.oi@twc.state.tx.us or by facsimile to (512) 935-3280 or by mail to:**
- Texas Workforce Commission
RID - Office of Investigations
101 East 15th Street, Room 214-T
Austin, Texas 78778-0001
- 19.4 **For all other incidents of suspected fraud, waste, program abuse, possible illegal expenditures, unlawful activity, violations of law or agency rules, policies, and procedures not involving TWC employees, Board staff or Board contractor staff, report by opening a case in the Program Integrity Reporting and Tracking System (PIRTS) and then conduct fact-finding.**
- 19.5 The Board shall establish and implement reasonable internal program management procedures sufficient to ensure that its employees, participants, subrecipients, and subcontractors are aware of the Agency's Fraud, Waste, and Program Abuse Hotline (1-800-252-3642) and that Hotline posters are displayed to ensure maximum exposure to all persons associated with or having an interest in the programs or services provided under this Agreement.
- 19.6 Except as provided by law or court order, the Parties to this Agreement shall ensure the confidentiality of all reports of violations, as listed above. Neither the Board nor the Agency shall retaliate against any person filing a report.
- 19.7 Upon review of submitted reports, the Agency's Office of Investigations may elevate the report to the appropriate State or Federal authority, accept the case for investigation and/or action at the State level, or return the case to the Board, or Board subcontractor, for action including, but not limited to:
- 19.7.1 further investigation;

- 19.7.2 referral for prosecution under the Texas Penal Code, or other State or Federal laws; and/or
- 19.7.3 other corrective action, as may be appropriate.

19.8 In such referral cases, the Board shall ensure that a final investigation closing report is submitted to the Agency's Office of Investigations, after all feasible avenues of investigation action have been taken. After all associated legal and/or corrective action has been taken, the Board will submit a final action report to the Office of Investigations.

SECTION 20 - PREVENTING CONFLICT OF INTEREST

- 20.1 The Board shall comply with the requirements below and with the conflict of interest provisions in OMB UG, UGMS, FMGC, and at 40 TAC §§ 802.21 (c)-(d) and 802.41, regarding any grants awarded under this Agreement.
- 20.2 In order to maintain the integrity of expenditure of public funds arising from grants subject to this Agreement, conflicts of interest shall be avoided by both Parties for all issues related to this Agreement or any grant awarded by the Agency to the Board.
- 20.3 No person shall participate in any decision relating to any subcontract or subaward which affects his/her personal pecuniary interest including, but not limited to:
- 20.3.1 members of the Board;
 - 20.3.2 employees, subrecipients, and subcontractors of the Board; and
 - 20.3.3 persons who exercise any function or responsibility in the review or approval of the undertaking or carrying out of this Grant Award.
- 20.4 The Board shall maintain on file, and make available for inspection by the Agency, a statement submitted by each Board employee, subrecipient, subcontractor, or governing body member disclosing any interest, fact or circumstance which does or may present a potential conflict of interest. Such conflict of interest disclosure statements shall be updated, as circumstances require, but at least annually.
- 20.5 This requirement shall serve as a minimum standard and shall not be construed as to limit the Board's authority for more restrictive governance to prevent real and/or apparent conflicts of interest.

SECTION 21 - NON-DISCRIMINATION AND EQUAL OPPORTUNITY

- 21.1 The Board shall comply with the provisions of the following laws:
- 21.1.1 Titles VI and VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, and § 2000e-16, as amended;
 - 21.1.2 The Rehabilitation Act of 1973 §§ 503, 504, and 508, 29 U.S.C. §§ 793,794, and 794d, as amended;
 - 21.1.3 Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688, as amended;
 - 21.1.4 The Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.*, as amended;
 - 21.1.5 The Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, as amended; and
 - 21.1.6 The Women in Apprenticeship and Non-traditional Occupations Act, 29 U.S.C. § 2501 *et seq.*, as amended.
- 21.2 The Board and its subrecipients and subcontractors:
- 21.2.1 shall ensure that the employees and personnel of the local workforce development system reflect the demographic composition of the LWDA, subject to the provisions of this Agreement and the Integrated State Plan;

- 21.2.2 may not deny services under any grant to any person and are prohibited from discriminating against any employee, applicant for employment, or beneficiary because of race, color, religion, sex, national origin, age, physical or mental disability, temporary medical condition, political affiliation or belief, citizenship, or his or her participation in any federal or state financially assisted program and/or activity; and
- 21.2.3 shall ensure that the evaluation and treatment of employees and applicants for employment are free from discrimination.

SECTION 22 - PROPERTY

- 22.1 The Board shall acquire, maintain, and/or dispose of property purchased with funds received under any grant in accordance with:
 - 22.1.1 OMB UG (2 C.F.R. §§ 200.310 through 200.316);
 - 22.1.2 UGMS (§§ 200.310 through 200.316);
 - 22.1.3 FMGC, Chapter 13; and
 - 22.1.4 Agency directives.
- 22.2 The Board shall take all reasonable precautions to ensure all property acquired under any grant is properly maintained, accounted for, and protected from damage, loss, unreasonable deterioration or theft.
- 22.3 The Board shall require by contract that it shall have the right and discretion, at the end of all subawards, to require a subrecipient or subcontractor that acquires equipment or supplies under that subaward to transfer title of such property to the Board (or another entity designated by the Board) for use in authorized activities of a continuing Board-administered program.
- 22.4 Non-governmental subrecipients or subcontractors having property acquired under any grant shall acquire and maintain property insurance reasonably sufficient to replace any damaged, lost or stolen property for as long as the property is kept.
- 22.5 Boards that are governmental entities, or their governmental subrecipients or subcontractors, having property acquired under any grant may be required by the Agency to replace any damaged, lost or stolen property from sources other than federal or state funds, if no or inadequate property insurance is in effect.
- 22.6 The Board shall designate a Property Control Officer to be responsible for the inventory and control of all real property or non-expendable personal property purchased in whole or in part with funds received under any grant and in the custody of the Board, its subrecipients, or subcontractors. The Board's Property Control Officer shall conduct an annual physical inventory of such property and reconcile the inventory with the accounting records.
- 22.7 The Board's Property Control Officer and a representative of the Agency shall identify and prepare an annual property inventory of any real property or non-expendable personal property on loan from the Agency to the Board at the request of the Agency Asset Manager. An Agency F-68 Form shall be signed by an authorized agent of the Board acknowledging all real or non-expendable personal property on loan from the Agency to the Board.

SECTION 23 - GENERAL PROVISIONS

- 23.1 This Agreement shall be construed, interpreted, and applied in accordance with the laws of Texas, excluding its choice of law rules.
- 23.2 Except with respect to defaults of subrecipients or subcontractors, no liability or loss of rights hereunder shall result to either party from delay or failure in performance (including any failure by the awardee to progress in the

performance of the work) if such failure arises out of causes beyond the reasonable control and without the default or negligence of the party affected.

Such causes may include but are not limited to acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, serious labor disputes, shortage of or inability to obtain material or equipment, and unusually severe weather. In every case, however, the failure to perform must be beyond the control and without the fault or negligence of the party affected.

- 23.3 If any of the provisions of this Agreement shall contravene or be invalid under the laws of the United States or the State of Texas, such contravention or invalidity shall not invalidate the whole Agreement, but it shall be construed as if not containing the particular provision or provisions held to be invalid, and the rights and obligations of the Parties shall be construed and enforced accordingly and the Board and the Agency shall endeavor to agree on a mutually acceptable alternative provision.
- 23.4 To the extent of any inconsistency between the provisions of clauses, attachments, and any other specifications or provisions which are a part of or incorporated by reference in this Agreement, the following order of precedence shall apply:
- 23.4.1 First: The provisions of clauses within this Agreement; then
- 23.4.2 Second: The provisions of any other part attached or incorporated by reference to this Agreement.

SECTION 24 - CONFIDENTIALITY OF RECORDS

- 24.1 The Board agrees to maintain the confidentiality of any information that identifies or may be used to identify any grant and benefit participants.
- 24.2 The Board shall not disclose or re-disclose any employer or Personally Identifying Information (PII) of the subject of the information unless permitted by law.
- 24.3 All releases of information shall be in accordance with policies of the Agency and the Board. If there is any conflict between Board policy and Agency policy, Agency policy shall control.
- 24.4 Individually identifiable information obtained from the Unemployment Insurance system, including wage records, and from WorkInTexas is not public information for the purposes of the Texas Public Information Act.
- 24.5 Notwithstanding any other provision of this Agreement, the Board shall not release any PII obtained from Unemployment Insurance records or from WorkInTexas, unless otherwise authorized by the Agency.
- 24.6 The Board shall comply with Attachment A, Safeguards for TWC Information, which is incorporated in its entirety as part of this Agreement.

SECTION 25 - SECURITY MANAGEMENT

- 25.1 The Board shall take appropriate actions to assure compliance with 1 TAC, Chapter 202, the Federal Information Security Management Act (FISMA), 44 U.S.C. § 3541 *et seq.*, and the National Institute of Standards in Technology (NIST) recommended best practices and all other state or federal rules, regulations, and laws relating to information security management (collectively, "ISM"). The Board shall
- 25.1.1 implement ISM compliance policies and procedures for Board staff and Board subrecipient and subcontractor staff (hereinafter referred to as "Board staff" for the purposes of this section); and
- 25.1.2 assure and be responsible for Board staff compliance with such ISM requirements.

- 25.2 Board staff shall follow all Agency Security Standards and Guidelines (SG) (available on the Agency intranet at https://intra.twc.state.tx.us/intranet/its/html/iris_home.html) when making use of Agency information resources, Agency-provided data, and/or Agency-administered systems including but not limited to the following SGs:
- 25.2.1 SG1.0 Acceptable Use
 - 25.2.2 SG2.0 Account Management
 - 25.2.3 SG30.0 Vendor Access
 - 25.2.4 SG33.0 Data Transfers
- 25.3 User Verification
- 25.3.1 The Board shall implement and maintain a system for user verification to ensure that all user accounts are current.
 - 25.3.2 The Board shall immediately revoke access to user accounts resulting from staff departures or contract completions.
 - 25.3.3 The Agency Systems Administrators will conduct a quarterly review of Board account status to identify obsolete accounts. For all accounts that are no longer in use, the Administrator shall notify the appropriate Resource Access Contract Facility (RACF) Administrator to delete the account, and email the “Terminated Employees” shared distribution list to ensure that the appropriate Agency accounts are deleted. All accounts dormant for more than three (3) months will be flagged and disabled unless the Agency is notified to the contrary by the Board. Accounts dormant for six (6) months or more will be deleted.
- 25.4 Virus Protection
- 25.4.1 The Agency shall maintain virus protection software on all systems and custom applications provided to the Board.
 - 25.4.2 The Board is responsible for the use and installation of virus protection software on all systems and custom applications maintained by the Board.
 - 25.4.3 Virus protection software implemented in compliance with ABA, Section 25.4.2 shall include automatic updates that apply the most current and appropriate protection and patches for viruses or malicious code infection on all network servers that provide virus scanning services to network attached workstations. It shall also provide automatic scanning of all files stored on or attached to workstations or servers. It shall also provide automatic scanning of files accessed or copied onto a storage device from external sources, including the Internet and media such as CD-ROMs, flash drives, and floppy disks.
- 25.5 Disaster Recovery
- 25.5.1 The Agency shall maintain a disaster recovery plan for Agency-provided computer resources including The Workforce Information System of Texas (TWIST) and WorkInTexas.com.
 - 25.5.2 The Board shall develop and maintain a disaster recovery plan for its own computing resources. The plan should cover all relevant platforms – personal computers, local area networks, workstations, and midrange systems, as appropriate. Disaster recovery activities should include data backup, local area network recovery testing, and contingency planning functions for all local data.
- 25.6 Data Security Guidelines
- 25.6.1 The Agency shall provide automated security and security procedures for Agency administered custom applications.
 - 25.6.2 The Agency shall provide standards and guidelines for use of any unsecured networks, such as the public Internet, for transport of confidential data.
 - 25.6.3 Logical and physical access to all information resources (hardware and software) residing in public access areas, shall be controlled by the Board, its **subrecipients and** subcontractors, or Agency staff as appropriate.

25.7 Data Access

- 25.7.1 The Board shall determine, assign, and secure the computer access codes required for a Board or subcontractor user or Agency staff member to perform assigned job duties, including changing/resetting user local passwords and administering RACF security adds/changes and deletes for Board and subcontractor users.
- 25.7.2 The Board shall require all persons to whom it grants access to **Workforce Applications** to execute a P-41 TWC Information **Resources Usage** Agreement **as described in WD Letter 11-16 and subsequent issuances**. All Employees Form available at the following web address: http://intra.twc.state.tx.us/intranet/gl/html/personnel_forms.html. The instructions for the P-41 Form are located at the same web address as P-41 INST Information **Resources Usage** Agreement, All Employees Instructions.
- 25.7.3 **The Board shall require all external agencies and community partners to whom it grants access to Workforce Applications to execute a P-48 TWC Systems Access and Data Security Report For Other Agencies and Community Partners as described in WD Letter 11-16, and subsequent issuances. All Security Access forms are located at the following web address:** http://intra.twc.state.tx.us/intranet/gl/html/information_technology_forms.html.
- 25.7.4 The Board shall require all persons to whom it grants access to **Workforce Applications** to annually complete the Information Technology and Security Awareness Training provided by the Agency for Agency employees. This training is available at <http://intra.twc.state.tx.us/intranet/train/cbt/itsecu/index.html>.
- 25.7.5 The Board shall maintain a signed copy of the most recent Agency Information Security Agreement for each user.
- 25.7.6 The Board shall determine which of its employees and contractors need Health and Human Services Commission (HHSC) computer access to perform assigned job duties. (NOTE: Request for HHSC computer access shall be routed to the TWIST Help Desk.)

25.8 Security Incidents and Violations

- 25.8.1 The Board shall notify the Agency's Chief Information Security Officer within twenty-four (24) hours if a security violation or breach is detected, or if the Board has any reason to suspect that the security or integrity of the Agency's data has been, or may be, compromised in any way. Notification shall be provided in the manner specified by Agency IT security guidelines. The Board shall comply with Agency directives in resolving any incidents.
- 25.8.2 Written notice of removal of access authorization for any individual shall be submitted to the Agency immediately upon removal of that access.

25.9 Removable Media

- 25.9.1 Removable media is defined as, but not limited to, diskettes, tapes, compact discs, DVDs & Blu-ray discs, memory cards/sticks, USB/Firewire "Flash" key/pen/thumb drives, portable mass storage devices such as external hard drives, personal audio/video players such as iPods, tablets, cellular telephones, and smart phones with or without expandable memory capabilities.
- 25.9.2 The Board shall prohibit the use of personally owned removable media unless specific exemption is granted by an authorized executive of the Board.
- 25.9.3 The Board shall require that any Agency data placed on removable media be encrypted.
- 25.9.4 In the event of loss or theft of removable media containing Agency data, the Board shall notify the Agency and include a complete description of the data, including an index or table of contents of those data.
- 25.9.5 The Board shall cause all removable media to be scanned for viruses, worms, Trojans, and any other malicious code prior to its use with Agency data or systems.
- 25.9.6 The Board shall assure that the reuse or disposal of removable media follows data sanitization guidelines in compliance with National Institutes of Standards and Technology Special Publication 800-88 Guidelines for Media Sanitization in order to assure removal of any electronic protected, confidential and/or sensitive Agency data.

SECTION 26 - COORDINATION OF ASSISTANCE TO JOB SEEKERS AND EMPLOYERS

The Board shall:

- 26.1 Identify claimants and provide services under a profiling system referenced in Texas Labor Code § 207.021(a)(9) and in accordance with the Employment Service Guide and subsequent issuances.
- 26.2 Maintain and provide to claimants and employers Agency Forms B-32CE, B-35E, B-35S or B-35V, UI Work Search Logs and other UI approved materials in English and in Spanish, upon request; and display all posters required by the Agency including but not limited to the Texas Pay Day Law poster and the Child Labor Law poster in Texas Workforce Solutions Offices.
 - 26.2.1 Distribute Agency Form entitled “Commission Approved Training & Reporting Earnings” to all participants when the Board has a training contract where participants may be UI claimants.
 - 26.2.2 Distribute Agency Form entitled “Notice: For Employers with subsidized Employment Contracts” to employers who are participating in subsidized employment programs so that employers are aware of their responsibilities regarding employee wage reporting to TWC.

The forms are available on the Workforce Development Resources web page on TWC’s Intranet. The address is: <http://intra.twc.state.tx.us/intranet/wf/html/bdtools.html>. Staff will find the forms at the bottom of the page in the section titled: Agency-Board Agreement.

- 26.3 Provide the following services and Workforce Solutions Offices access:
 - 26.3.1 Assistance to employers and claimants in order to file, respond to, or participate in a UI appeal in accordance with Agency policy directives.
 - 26.3.2 Assistance to employers in order to file, respond, or participate in issues related to UI taxes.
 - 26.3.3 Provide the public in writing, at the Workforce Solutions Office, and verbally, if a request is made via phone or in person, with the toll-free number for the Agency’s Labor Law Department.
 - 26.3.4 Maintain a supply of and provide payday wage claim forms (Agency Form LL-1 in English and Spanish) upon request.
 - 26.3.5 Accept and forward
 - 26.3.5.1 All completed payday wage claims to the Agency’s Labor Law Department.
 - 26.3.5.1.1 The Board shall ensure, upon request, the claimant’s signature on the payday wage claim is witnessed by authorized staff before forwarding to the Agency’s Labor Law Department.
 - 26.3.5.2 All wage claim and child labor appeals to the Agency’s Special Hearings Department.

SECTION 27 – COORDINATION WITH WORKFORCE VOCATIONAL REHABILITATION SERVICES

The Board shall:

- 27.1 Ensure the needs of individuals with disabilities are addressed through the provision of necessary and appropriate access to services, including access to technology and materials, at Workforce Solutions Offices.**
- 27.2 Ensure methods are in place to refer individuals between Workforce Solutions Offices and Workforce Vocational Rehabilitation Services Offices, as applicable, for appropriate services and activities.**

- 27.3 Develop an infrastructure funding agreement in conjunction with the Agency, as applicable, to address system services and operating costs for Workforce Solutions Offices when:**
- 27.3.1 Dedicated space is reserved for the Workforce Vocational Rehabilitation Services program that is not available for use by another party); or**
 - 27.3.2 Space in a Workforce Solutions Office is used by the Workforce Vocational Rehabilitation Services program after hours or when the facility is normally closed.**

SAFEGUARDS FOR TWC INFORMATION

The Board, Board staff, and subrecipients shall comply with these safeguards:

1. Safeguards: Maintain sufficient safeguards over all TWC Information to prevent unauthorized access to or disclosure of TWC Information. Board shall assure that Board staff, Board subrecipients, and Board subcontractor staff comply with all safeguards and responsibilities of TWC Information Technology Security Guidelines and this Attachment A. Board shall be responsible for compliance by Board staff, Board subrecipients, and Board subcontractor staff and shall be liable for any damages resulting from failure by Board staff, Board subrecipients, or Board subcontractor staff to comply with these safeguards.

“TWC Information” means records maintained by the Agency, and records obtained by Board, Board staff, Board subcontractor, and Board subcontractor staff from the Agency under this Agreement, including (1) records and data compilations provided electronically, on paper, or via online access or e-mail, (2) records and data compilations that Board, Board staff, Board subcontractor, or Board subcontractor staff have converted into another format or medium (such as handwritten or electronic notes), and (3) records and data compilations incorporated in any manner into Board, Board staff, Board subcontractor, or Board subcontractor staff records, files, or data compilations.

2. Monitoring. Monitor its Users’, including Board staff, Board subrecipients, and Board subcontractor staff, access to and use of TWC Information, and shall ensure that TWC Information is used only for the limited purpose of fulfilling Board obligations under this Agreement (limited purpose). Board shall also ensure that TWC Information is used only for purposes authorized by law and in compliance with all other provisions of this Agreement. Board shall require that all Board subrecipients monitor access to and use of TWC Information by Board subcontractor staff.
3. Storage and Protection. Board, Board staff, Board subcontractor, and Board subcontractor staff shall store and process TWC Information in a place physically secure from access by unauthorized persons by any means.
4. Access. Board, Board staff, Board subcontractor, and Board subcontractor staff shall undertake precautions to ensure that only authorized personnel are given access to TWC Information stored in computer systems.
5. Instruction. Board, Board staff, Board subcontractor, and Board subcontractor staff shall instruct all personnel having access to TWC Information about all confidentiality requirements including the requirements of 20 C.F.R. Part 603 as well as the sanctions specified in this Agreement and under state and federal law for unauthorized use or disclosure of TWC Information. Board acknowledges that all personnel who will have access to TWC Information have been instructed as required.
6. Disposal. Board, Board staff, Board subcontractor, and Board subcontractor staff shall dispose of TWC Information and any copies thereof after the limited purpose is achieved, except for TWC Information possessed by any court. Disposal means return of TWC Information to Agency or destruction of TWC Information, as directed by Agency. Disposal includes deletion of personal identifiers in lieu of destruction. In any case, Board, Board staff, Board subcontractor, and Board

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subcontractor staff shall dispose of all TWC Information as required by this Agreement and the Board's written records retention requirements.

7. System. Board, Board staff, Board subcontractor, and Board subcontractor staff shall establish and maintain a system sufficient to allow an audit of compliance with the requirements of this Attachment A and the other provisions of this Agreement.
8. No Disclosure or Release. Board, Board staff, Board subcontractor, and Board subcontractor staff shall not disclose or release any TWC Information other than as permitted in this Agreement, without prior written consent of Agency.
9. Unauthorized Disclosure. It is a breach of this Agreement to disclose TWC Information orally, electronically, in written or printed form, or in any other manner without the prior written consent of Agency:
 - 9.1 to any subcontractor employee of Board or subcontractor employee of Board subcontractor or any individual not directly employed by Board or Board subcontractor;
 - 9.2 to another government entity, including a law enforcement entity;
 - 9.3 to Board or Board subcontractor employees who do not have a need to use TWC Information for the limited purpose under this agreement.
10. Authorized Disclosure. TWC Information may only be disclosed to employees under the direct hiring-and-firing control of Board or Board subcontractor who have a need to use the TWC Information for the limited purpose under this agreement.
11. Security Violation. Board and Board subcontractor shall monitor access of Users and shall notify Agency within twenty-four (24) hours if a security violation of this Agreement is detected, or if Board or Board subcontractor suspects that the security or integrity of TWC Information has or may have been compromised in any way. The time period for notifying TWC under this section is reduced to one (1) hour for suspected security violations that involve protected health information of a covered under 45 C.F.R. Parts 160, 162, and 164, such as Medicaid Information provided from, by or accessed through the Health and Human Services Commission systems as required by the Health Information and Portability and Accountability Act (HIPAA) and the Health Information Technology Act (HITECH).
12. Format. TWC Information is subject to the requirements of this Agreement even if the TWC Information is converted by Board, Board staff, Board subcontractor, or Board subcontractor staff into another format or medium, or incorporated in any manner into Board or Board subcontractor records, files, or data compilations.
13. Access Limited. Board and Board subcontractor shall limit access to TWC Information to their employees who need access to achieve the Limited Purpose.
14. Mobile Device and Removal. Board, Board staff, Board subcontractor, and Board subcontractor staff shall not place TWC Information on mobile, remote, or portable storage devices, or remove storage media from Board or Board subcontractor facility, without the prior written authorization of Agency.

15. Public Information Act.

- 15.1 Unemployment Information. Under Texas Labor Code § 301.085, individually identifiable information regarding unemployment insurance benefits applicants and recipients and employer tax reported information is not “public information” for purposes of the Texas Public Information Act, Texas Government Code, Chapter 552. Board, Board staff, Board subcontractor, and Board subcontractor staff shall not release any TWC Information in response to a request made under the Public Information Act or under any other law, regulation, or ordinance addressing public access to government records.
- 15.2 Job Matching Services. Individually identifiable information maintained in the WorkInTexas system is not “public information” for purposes of the Public Information Act. Board, Board staff, Board subcontractor, and Board subcontractor staff shall not release any individually identifiable information from the WorkInTexas system in response to a request made under the Public Information Act or under any other law, regulation, or ordinance addressing public access to government records.
- 15.3 Education Records. “Student record” as defined in the Family Educational Rights and Privacy Act (FERPA) is not “public information” for purposes of the Public Information Act. Boards, Board staff, Board subcontractor, and Board subcontractor staff shall not release any “student records” collected, used or maintained in response to a request made under the Public Information Act or under any other law, regulation, or ordinance addressing public access to government records.
- 15.4 Protected Health Information. Protected health information as defined in Texas Health and Human Services Chapter 181 and 45 C.F.R. Parts 160, 162, and 164, such as Medicaid information provided from, by or accessed through the Health and Human Services Commission systems as required by the HIPAA and HITECH, is not subject to release under the Public Information Act. Boards, Board staff, Board subcontractor, and Board subcontractor staff shall not release any protected health information except in accordance with law as applicable to the information and shall secure the information consistent with applicable laws.
16. Subpoena. Notify the Agency within twenty-four (24) hours of the receipt of any subpoena, other judicial request, or request for appearance for testimony upon any matter concerning TWC Information. Federal regulations dictate the handling of subpoenas for TWC Information. Board or Board subcontractor shall comply with the subpoena handling requirements applicable to the information, including 20 C.F.R. § 603.7 in responding to any subpoena, other judicial request, or request for appearance for testimony upon any matter concerning TWC Information relating to unemployment compensation and employer tax information.
17. Federal Regulation. Comply with all requirements in federal and state law for safeguarding TWC Information, including 20 C.F.R. § 603.9 relating to safeguarding TWC unemployment compensation and employer tax information and insuring its confidentiality.
18. Unauthorized Lookup. Shall not access TWC Information listed under the employee’s Social Security number (SSN) or the SSN of a co-worker, family member, or friend.
19. Screening. Permit access to TWC Information only to employees that the Board or Board subcontractor has determined poses no threat to the security of TWC Information.

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20. Internet. Board, Board staff, Board subcontractor, and Board subcontractor staff shall not transmit any TWC Information over the Internet unless it is encrypted using TWC approved encryption standards.
21. No Transfer. Board and Board subcontractor shall not transfer the authority or ability to access or maintain TWC Information under this Agreement to any other person or entity.
22. Resource Access Control Facility (RACF) Manager. The Board shall designate an initial RACF Manager and any subsequent RACF Managers in writing to the Agency. All designated RACF Managers must execute a P-41 Texas Workforce Commission Information Resources Usage Agreement, and complete Security Training and Agency RACF Manager Training (“Manager Training”). The Agency will not authorize access to a designated RACF Manager until Agency RACF Administration has received copies of the designee’s Training Certificate, certificate of completion of Manager Training (“Manager Training Certificate”), and completed a P-41 Texas Workforce Commission Information Resources Usage Agreement. The RACF Manager shall create a written report within fifteen (15) calendar days after the end of each month, listing all Users authorized for online access at any time during the previous month including the unique identifier and work address of each User. The RACF Manager shall immediately terminate access of any User no longer employed by the Board or Board subcontractor or any User whose job responsibilities no longer require access to TWC Information. The RACF Manager shall provide a copy of all reports, and a list of the names, unique identifiers, and work addresses of all current Users, with P-41 Texas Workforce Commission Information Resources Usage Agreements and copies of Training Certificates attached, at any time upon Agency request. A unique identifier may be used on all reports in lieu of SSN provided that the User SSN is available upon request. The Board shall be responsible for ensuring that each RACF Manager complies with the provisions of this Agreement, and shall be liable and responsible for all actions of each RACF Manager.

The RACF Manager shall provide a copy of all reports and a list of external agencies and community partners with P-48 TWC Systems Access and Data Security Report for Other Agencies and Community Partners, at any time upon Agency request.