AGREEMENT BETWEEN
THE SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE AND

_____

This Memorandum of Agreement (Agreement) is entered into by and between the South Carolina Department of Employment and Workforce (DEW)
and _____ (Training Provider).

BACKGROUND/PURPOSE

The Workforce Innovation and Opportunity Act (WIOA) is designed to help job-seekers access employment, education, training, and support services to succeed in the labor market and to match employers with the skilled workers they need to compete in the global economy. To achieve that end, Congress has required states to use quarterly wage records in measuring the progress of State and local performance accountability measures.

To carry out the mandates of WIOA, DEW maintains a list of Eligible Training Providers (ETPs) and their eligible training programs. The Eligible Training Provider List (ETPL) is comprised of ETPs approved to provide training services to eligible WIOA participants. Pursuant to Federal guidelines, the ETPL must be accompanied by relevant performance and cost information, must be presented in a way that is easily understood to maximize informed consumer choice and serve all significant population groups, and also must be available in an electronic format. In addition, Section 122 of WIOA requires ETPs to report employment outcomes. Therefore, ETPs will benefit from South Carolina enabling cross-matching with wage records, education, and training provider records.

This Agreement addresses the processes to support the reporting of required data by ETPs, including the matching of wage records with records maintained by the programs.

ARTICLE I DURATION OF AGREEMENT

This Agreement shall take effect upon the signatures of both parties and shall terminate on **June 30, 2027.** However, the confidentiality requirements of this Agreement shall survive the life of this Agreement. This Agreement may be amended in the event of changes in Federal or state law regarding the confidentiality of data, including Unemployment Compensation (UC) information, specifically information contained in unemployment insurance (UI) wage records. No amendments, modifications, changes, additions, or deletions of the Agreement shall be valid unless in writing, signed by both parties and attached to this Agreement.

ARTICLE II APPLICABLE LAWS AND REGULATIONS

This Agreement is subject to applicable federal and state laws, regulations, and guidance, including, but not limited to:

1. The Privacy Act of 1974, 5 U.S.C. §552a;

2. Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA), Public Law 107-347;

3. Family Education Rights and Privacy Act, 20 U.S.C. 1232g; 34 C.F.R. Part 99 (FERPA) (if applicable); and

4. Workforce Innovation and Opportunity Act, 29 U.S.C. § 3101, et seq.

5. Federal-State Unemployment Compensation (UC) Program; Confidentiality and Disclosure of State UC Information, 20 C.F.R. Part 603;

6. The Rehabilitation Act of 1973 as amended, 34 C.F.R. § 361.38;

7. Office of Management and Budget M-07-16;

8. Tax Information Security Guidelines for Federal, State and Local Agencies, IRS Publication 1075;

9. US Department of Labor, Employment and Training Administration, Training and Employment Guidance Letter No. 7-16, issued August 23, 2016;

10. US Department of Labor, Employment and Training Administration, Unemployment Insurance Program Letter No. 14-17, issued March 23, 2017;

11. The South Carolina Department of Employment and Workforce law, S.C. Code Ann. §41-27-10, et seq., including §§ 41-29-150 through 170;

12. South Carolina Commission on Higher Education "Nonpublic Postsecondary Institution License Act", SC Code Sections 59-58-10 through 59-58-140

13. The Family Privacy Protection Act, S.C. Code Ann. §§ 30-2-10, et. seq.;

14. Personal Identifying Information Privacy Protection, S.C. Code Ann. §§ 30-2-300 et seq.;

15. Breach of security of state agency data; notification; rights and remedies of injured parties; penalties; notification of Consumer Protection Division, S.C. Code Ann. § 1-11-490;

16. South Carolina Financial Identity Fraud and Identity Theft Protection Act (FIFITPA), 2008 Act 190, as amended;

17. Data Breach Notification, 2014 Act No. 286, Section 117.117, as revised in any future annual appropriations act;

18. State Commission on Higher Education Article I Licensing Nonpublic Postsecondary Educational Institutions, SC Code Regs 62-1 through 62-28

19. SC Department of Administration's policies, standards, and guidelines mandated for state agencies as required by SC Proviso 93.20 (2018), Cyber Security;

20. South Carolina Department of Employment and Workforce State Instruction Letters 16-13, Change 1; 20-03, Change 2; 21-02; 25-02

ARTICLE III DEFINITIONS

1. CONFIDENTIAL INFORMATION DEFINED.

The following is a list of confidential information. Confidential information includes, but is not limited to, an individual's:

1. Name, Address, and Phone Number

2. Social Security Number/Tax Identification Number

3. Wage history

4. Any identifying particulars that, in combination with publicly accessible information, would identify the individual or employing unit.

2. PERSONALLY IDENTIFIABLE INFORMATION.

Personally identifiable information (PII) is information that can be used to uniquely identify, contact, or locate specific individuals. Examples of PII elements include: name, address, date of birth, race, gender, telephone number, official government issued identification numbers, Social Security benefit data, tax data, and financial, medical and employment information.

3. AGGREGATE DATA.

Aggregate data is wage data that has been grouped and stripped of any information that would identify the individual(s) and employer to whom the data pertains, including but not limited to, name and social security number, or Federal Employer Identification Number.

4. AUTHORIZED REPRESENTATIVE.

An authorized representative is defined as any entity or individual designated by a State or local education authority or an agency headed by an official listed in section 99.31(a)(3) of the FERPA regulations to conduct—with respect to Federal- or State- supported education programs—any audit or evaluation, or any compliance or enforcement activity in connection with Federal legal requirements that relate to these programs.

5. ELIGIBLE TRAINING PROVIDER.

A provider of training services is eligible to receive funds for the provision of such services under WIOA Title I Adult and Dislocated Worker programs and, in certain circumstances, the Title I Youth Program. Such providers must meet the requirements of Section 122 of WIOA and submit an annual performance report in accordance with Section 116(d)(4) of WIOA.

Additionally, a provider of training must meet the following eligibility requirements to be eligible for inclusion on the ETPL:

- Qualify as one of the following:
    - Institution of higher education that provides a program of training that leads to a recognized postsecondary credential
    - Entity that carries out Registered Apprenticeship Programs
    - Public or private training providers, including community-based organizations, joint labor-management organizations, pre-apprenticeship programs, and joint labor-management organizations
    - Provider of adult education and literacy activities, if such activities are provided concurrently or in combination with other training services
    - LWDB if it meets the conditions of WIOA § 107(g)(1)
- Be a legal entity
- In-state and out-of-state postsecondary providers of training must provide evidence of licensure, accreditation, or exemption from licensure by the appropriate South Carolina or federal licensing authority prior to placement on the ETPL
- Be in good standing and current on state unemployment insurance taxes
- Provide an appropriate program of training services
- Have the ability to do all of the following:
    - Offer programs that lead to recognized postsecondary credentials or certifications
    - Meet the needs of local employers and participants
    - Serve individuals with barriers to employment
- Have refund policies specifying when refunds for tuition and other costs associated with the training program will be allowed that are in writing and are published to ensure students are aware of how to request a refund
- Have a written grievance policy for students to file complaints within an organization against faculty, staff, or other employees that is published to ensure that students are aware of how to file a complaint
- Comply with all applicable non-discrimination and equal opportunity provisions as potential recipients of WIOA funds, in accordance with WIOA § 188

ARTICLE IV SAFEGUARDS

Training Provider agrees to:

1. Retain information disclosed or obtained pursuant to this Agreement according to applicable retention schedules or as otherwise provided by law.

2. Maintain a system sufficient to allow an audit of compliance with the requirements of this Agreement.

3. Where applicable, hereby designate DEW as its authorized representative under the Family Education Rights and Privacy Act, 20 U.S.C. 1232g; 34 C.F.R. Part 99 (FERPA).

4. Provide accurate and true information to DEW for purposes of establishing and maintaining the ETPL.

If applicable, DEW agrees to:

1. Use personally identifiable information only for purposes outlined within this Agreement; specifically, to carry out an audit or evaluation of Federal or State-supported education programs, or to enforce or to comply with Federal legal requirements that relate to those programs, in compliance with 20 C.F.R. 99.35(a)(3)(ii)(B).

2. Destroy any personally identifiable information within seven (7) years from the date when the information received is no longer needed for the purpose(s) specified, in compliance with 20 C.F.R. 99.35 (a)(3)(iii).

3. Maintain policies and procedures consistent with FERPA and other Federal and State confidentiality and privacy provisions to protect personally identifiable information from further disclosure (except back to the disclosing entity) and unauthorized use.

ARTICLE V METHODS AND TIMING OF REQUESTS FOR INFORMATION

This Agreement must include the methods and timing of requests for information and responses to those requests, including the format to be used, in accordance with 20 C.F.R. § 603.10(b)(1)(iii).

ETPs will provide the data to be matched with DEW's Confidential Information. An aggregate data report will be generated by DEW via the South Carolina Works Online Services (SCWOS). The purpose of these reports is to maximize informed customer choice by assisting WIOA eligible participants, and members of the general public, in identifying effective training providers and programs.

This Agreement is limited to the disclosure of information provided to DEW for purposes of maintaining the ETPL. In order to generate an aggregate report via SCWOS, the Applicant/ETPs must collect and submit the following performance-related data elements on all individuals engaged in each approved program of training listed on the state's ETPL regardless of WIOA participation, no later than August 15, 2027, for Program Year 2026 (July 1, 2026 – June 30, 2027). *ETPL approval is contingent on the timely submission of all student data. Failure to submit all student data for the prior year for each approved program of training will result in the denial or removal of programs from the ETPL.*

1. *Social Security number
2. *Start Date
3. *Status
4. Exit Date (*An Exit Date is required if student status is Completed, Withdrew or Transferred*)
5. Credential

Data points marked with asterisks (*) indicate required fields. Failure to provide all the data listed for each approved program will affect performance results.

ARTICLE VI BREACH, ENFORCEMENT, TERMINATION, AND MODIFICATION

Breach: If any employee or agent of either party fails to comply with any provision of this Agreement, the Agreement must be suspended, and further disclosure of information (including any disclosure being processed) is prohibited, until the other party is satisfied that corrective action has been taken and there will be no further breach. In the absence of prompt and satisfactory corrective action, the Agreement must be canceled, and the party that has experienced the breach must be required to surrender to the other party all confidential information (and copies thereof) obtained under the Agreement and any other information relevant to the Agreement.

Enforcement: Pursuant to Federal and state law, DEW must hold confidential and must not publish information that reveals an individual's or employing unit's identity and/or any identifying particulars. In the event an employee or member of DEW violates S.C. Code § 41-29-150, the person may be fined not less than $20.00 or more than $500.00 and/or imprisoned for not longer than 90 days. DEW is permitted to disclose information under limited circumstances, including an agency or entity to which disclosure is permitted by federal statute or regulation. When disclosure is permitted,

the person or organization shall use the information or records solely for the purposes for which the information was disclosed and shall be bound by the same rules of privacy and confidentiality as DEW employees, including the penalties described in this section.

For disclosures in which FERPA applies, disclosure is permitted for specified officials and their authorized representatives in connection with audit and evaluation purposes, such as those outlined in this Agreement. When disclosure is permitted, the person or organization shall use the information solely for the purposes for which the information was disclosed and shall be bound by the same rules of privacy and confidentiality as outlined in FERPA and correspondence federal regulations.

Both parties agree that each party shall be liable for its own acts and omissions, and the acts and omissions of its employees, agents, and officers, and nothing within this Agreement shall impute or transfer liability to the other party. This provision shall survive the expiration or termination of this Agreement, regardless of the reason for termination.

Termination: Either party may terminate this Agreement once written notice to the other party is received and agreed to within 30 days. Termination shall not relieve either party of obligations prior to the effective date of termination.

Modification: This Agreement may be modified only by written agreement of both parties, signed by authorized representatives.

ARTICLE VII NON-DISCRIMINATION

No individual in the United States may, on the basis of race, color, religion, sex, national origin, age, disability, or political affiliation or belief, or for beneficiaries, applicants, and participants only, on the basis of citizenship status or participation in any WIOA Title I-financially assisted program or activity, be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIOA Title I-financially assisted program or activity.

SUCCESSORS AND ASSIGNS: This Agreement shall be binding upon DEW and Training Provider, their respective successors, executors, administrators, and permitted assigns. No party may assign, sublet, or transfer its interest in the Agreement without the prior written consent of the other parties.

ENTIRE AGREEMENT: This Agreement constitutes the entire Agreement between the parties. The contract shall be governed by and interpreted under the laws of the State of South Carolina.

The signatories hereunder warrant and declare that they are duly authorized to execute this Agreement by virtue of their position and title.

SC Department of Employment and Workforce:

_____

Zach Nickerson
Deputy Assistant Executive Director,
Workforce Development Division

_____

Date

Training Provider:

_____

Name (Printed)

_____

Signature

_____

Title

_____

Date

An Equal Opportunity Employer/Program. Auxiliary aids and services available upon request to individuals with disabilities at ADA@dew.sc.gov. For program funding details in compliance with the Stevens Amendment, please visit www.dew.sc.gov/funding.

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