

ETP Training Agreement

MEC Entrepreneurial Training

Term: 11/1/2008 to 10/31/2010
Approved Amount: \$0
Employer Contribution: \$0
Agreement No.: ET00-0000

This ETP Training Agreement (Agreement) is a “multiple employer contract” for the purpose of entrepreneurial training. It is entered into between the Employment Training Panel (ETP) and DEF Corporation, a corporation located in Sacramento, California (Contractor) for the term set forth above.

This Agreement sets forth the terms and conditions of training cost reimbursement that will be made to Contractor by ETP. The terms and conditions appear in Sections 1 – 3 and Exhibits A and B, which are attached and hereby incorporated-by-reference as part of this Agreement.

Section 1: Performance Standards
Section 2: Payment Standards
Section 3: General Standards
Exhibit A: Chart 1
Exhibit B: Menu Curriculum

Training Project Profile: Retrainee

By signature of the authorized representatives shown below, Contractor and ETP agree to the terms and conditions set forth herein with reference to the “ETP Agreement: Definition of Terms.” (See Section 3, Party Intent.)

Contractor:

ETP:

Signature/Date

Signature/Date

Printed Name and Title

Brian McMahon, Executive Director

Printed Name and Title

Section 1: Performance Standards

- 1.1 **Approved Amount.** ETP will reimburse Contractor for a maximum of \$0 in training costs, including administration.
- 1.2 **Reimbursement Rate.** Contractor will only be reimbursed at an hourly rate, payable on a cost-per-trainee basis. The rate is \$22 per hour for Classroom/Laboratory training and Advanced Technology (AT). The rate for Computer-Based Training (CBT) is \$8.00 per hour. Overall, administrative costs should not exceed 13% of payment earned.
- 1.3 **Retention.** Contractor shall use best efforts to ensure that each employer retains the same number of employees for at least 90 days following the start of training. Contractor agrees that any “employee attrition” that occurs after the start of training and throughout this 90-day period may be grounds for denial of the Final Payment, in the sole determination of ETP.
- 1.4 **Hours of Training.** Trainees may receive any number of hours within the minimum and maximum range as identified in Exhibit A: Chart 1 “Range of Hours”, including Class/Lab or CBT. For CBT, trainees must complete the entire course and be certified competent by their supervisor. Contractor will be reimbursed only for the standard hours identified for a CBT course in Exhibit B: Menu Curriculum.
- 1.5 **Rosters.** Trainees and trainers must document attendance at each training session in the form and manner required by ETP. The exception is CBT, where course completion is documented at the end. Contractor must produce proof of attendance or completion upon demand by ETP.
- 1.6 **Tracking.** Contractor must use the ETP Internet Class/Lab Tracking System for the purpose of documenting attendance and completion of training.
- 1.7 **Trainee Enrollment.** A trainee is deemed “enrolled” upon his or her registration with ETP. Contractor must submit a valid Social Security Number (SSN) and demographic information to ETP for each trainee as a condition of enrollment. The SSN and demographic information must be submitted on-line as prescribed by ETP.
- 1.8 **Confidentiality.** ETP will maintain all SSNs and demographic information in confidence using administrative, technical and physical safeguards. ETP will only use SSNs to verify wage and employment data. ETP will only use the demographic information to compile training statistics in the aggregate.
- 1.9 **Responsibility.** Contractor is directly responsible for the administration and delivery of all training.
- 1.10 **Menu Curriculum.** ETP will only fund the types of training listed for a given Job Number under Exhibit B: Menu Curriculum.
- 1.11 **Training Ratio.** The trainer-to-trainee ratio must not exceed 1:20 in a given class/lab course and 1:10 for AT. The trainer-to-trainee ratio is not applicable for CBT.
- 1.12 **Trainee Eligibility.** Each trainee must be the owner of a business. Each business must have at least one, but less than 10 full-time employees. The business must qualify as an

“employer” within the meaning of Section 10201(b) Unemployment Insurance Code. For purposes of trainee eligibility, owner and employee are defined as:

“Owner” is one or more individuals who each have at least a 20% financial investment in the business and a direct full-time involvement in its day-to-day operations. The spouse of an owner also qualifies if he or she has direct full-time involvement in the day-to-day operations. “Employee” is an individual who was employed full-time prior to the first day of training for the owner(s).

- 1.13 Entrepreneurial Training. Training must be in entrepreneurial skills that are necessary for effective management of the trainee’s business.
- 1.14 Modifications. The parties agree that certain terms and conditions of this Agreement may be modified at the request of Contractor with the written approval of ETP so long as there is no increase in the approved amount of funding, and no change in the scope or intent of training. The terms and conditions subject to modification are restricted to the following:
 - a. Add or delete a Job Number;
 - b. Expand or reduce the maximum Number of Trainees to Retain in a Job Number;
 - c. Change the Occupations for trainees in a Job Number;
 - d. Redistribute the Number of Trainees to Retain between Job Numbers;
 - e. Revise the Types of Training under Exhibit B: Menu Curriculum; and,
 - f. Change or extend the term dates.

If ETP approved a Modification pursuant to (a) through (f) above, it will prepare a written Modification Approval indicating the effective date, and transmit a copy of same to Contractor. Modifications cannot be made after termination of this Agreement.

Section 2: Payment Standards

- 2.1 **Schedule of Payment.** Reimbursement will be in up to three stages of Payments. All reimbursement must be invoiced, and will be paid, on a per-trainee basis. The total payments must be reconciled for all trainees taken as a whole, at the time of Fiscal Closeout. (See Exhibit A: Chart 1)
- 2.2 **Payments.** A trainee must be enrolled and must have completed at least 8 hours of training before any payment will be made. Payments may be made in three stages on a per-trainee basis, by Job Number.
- a. The first Progress Payment (P1) will be approximately 25% of the Average-Cost-per Trainee, payable upon enrollment and after the first eight hours of training.
 - b. The second Progress Payment (P2) will be paid upon completion of all training hours. Progress Payment (P1) and (P2) combined will be approximately 75% of the Actual Cost per trainee within the range of training hours specified in Chart 1 for each Job Number.

Invoicing P2 signifies that each trainee has completed all the training hours that will qualify for final reimbursement. Trainees invoiced for P2 will be deemed to have entered into the retention period applicable to the Job Number in which originally enrolled, and may only participate in additional training under a different Job Number.
 - c. The Final Payment (F) is payable at the end of retention, based on hours of training actually completed with reference to the minimum and maximum hours.
- 2.3 **Invoicing.** Contractor must submit timely and accurate invoices for the Progress Payments and Final Payment in the manner and form specified by ETP. The Fiscal Closeout invoice should be submitted to ETP no later than 30 days after the term of this Agreement has ended.
- 2.4 **Overpayment.** The Progress Payments and Final Payment are not earned until all Conditions of Reimbursement have been satisfied. Contractor must promptly repay ETP for any overpayments identified at Final Closeout, or in a subsequent Audit. Repayment must include Statutory Interest computed from the first day of the month following the overpayment.
- 2.5 **Suspend Payment.** ETP may, at its discretion, suspend any payment if it appears Contractor cannot comply with any Condition of Reimbursement or other requirement under this Agreement. ETP shall give Contractor written Notice of the suspension and provide a reasonable opportunity for correction.
- 2.6 **Funding Limit.** In no event shall ETP fund more than \$75,000 in total under this Agreement, including amendments thereto.
- 2.7 **Variable Reimbursement.** The reimbursement under this Agreement varies in accordance with the actual number of training hours completed and number of trainees retained, as long as reimbursement within each Job Number does not exceed the "Job Max Total Amount" shown in Exhibit A: Chart 1.

Section 3: General Standards

- 3.1 **Party Intent.** In the event of ambiguity, the intent of the parties shall be construed in accordance with the ETP 130 and open-meeting discussions at the time the training proposal was considered by the Panel. The “ETP Agreement: Definition of Terms” set forth in the ETP Contractor’s Guide, as in effect at the time this Agreement is signed, shall govern the meaning of terms and phrases used throughout this Agreement. (This is a link to the definitions within the Contractor’s Guide: <http://www.etp.ca.gov/docs/guide-mec.pdf#page=8>).
- 3.2 **Audits.** ETP has the right, during normal business hours, to examine or audit any and all records, papers and documents related to the delivery of services under this Agreement to the extent ETP deems necessary. This right extends for four years from termination of this Agreement. Audits will be conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS), and may utilize statistical sampling.
- 3.3 **Observation.** ETP has the right, during normal business hours, to freely observe and monitor the delivery of services under this Agreement with or without the presence of the owner or any other Contractor representative. In particular, ETP has the right to interview trainees, trainers and administrative personnel.
- 3.4 **Recordkeeping.** Contractor agrees to maintain all rosters, records and other writings that pertain to the delivery of services under this Agreement for a period of no less than four years from termination of this Agreement, or three years from Fiscal Closeout, whichever is later.
- 3.5 **Subcontracts.** All Subcontracts between Contractor and a third party for administrative services in connection with this Agreement should be filed with ETP in advance. ETP shall not be a party to any Subcontract. In the event of conflict or inconsistency between a Subcontract and this Agreement, the latter shall govern.
- 3.6 **Governing Law.** This Agreement shall be governed by the laws of the State of California. Contractor shall comply with all applicable federal, state and local law.
- 3.7 **Entire Agreement.** This is the entire agreement between the parties and it supersedes any other understanding or writing made between them related to this Agreement.
- 3.8 **Amendment.** This Agreement may only be amended in a writing signed by both parties, but for non-substantive amendments made at the discretion of ETP. There can be no substantive amendments after the termination date of this Agreement.
- 3.9 **Survival.** The Audits, Recordkeeping and Governing Law provisions of this Agreement shall survive its termination.
- 3.10 **Termination.** Either party may terminate this Agreement without cause by serving at least 30 days’ advance written Notice on the other party. However, ETP may terminate this Agreement immediately for cause.
- 3.11 **Release from Liability.** Contractor hereby releases ETP from liability for any claims, liabilities, losses, damages, costs or expenses (including attorney’s fees) that arise from or are related to this Agreement.

3.12 Nondiscrimination. Contractor represents that all employers participating in this Agreement will be equal opportunity employers, and will remain compliant with all state and federal laws pertaining to fair employment practices during the performance of this Agreement.

3.13 Notices. All Notices in connection with this Agreement must be in writing, and shall be effective upon receipt. Notice of termination or material breach and final notice of overpayment must be delivered by certified U.S. Mail with return receipt requested, or by a commercial courier with receipt. Otherwise, notices may be delivered by U.S. Mail, commercial courier, FAX or email. All notices to ETP must be addressed to the manager of a Regional Office or the Sacramento office as appropriate to the subject matter. All notices to Contractor must be addressed to the following authorized representative:

Name/Title

Street Address

City, State Zip

Phone Number

Fax Number

Email Address

Exhibit A: Chart 1 Summary

This Exhibit is a spreadsheet that will be created by ETP in the process of developing the contract

SAMPLE

Exhibit B: Menu Curriculum

Class/Lab Hours

00-000

CBT Hours

00-000

SAMPLE