

ETP Training Agreement

MEC Entrepreneurial Training

Term: --/--/-- to --/--/--
Approved Amount:
Agreement No.: ET

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

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 3.1, Party Intent.)

Contractor:

ETP:

Signature/Date

Signature/Date

Printed Name and Title

Stewart Knox, Executive Director
Printed Name and Title

Section 1: Performance Standards

- 1.1 Approved Amount. ETP will reimburse Contractor for a maximum of \$000 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 \$23 per hour for Classroom/Laboratory training and \$26 per hour for Advanced Technology (AT).
- 1.3 Retention. Contractor shall use best efforts to ensure that each employer retains the same number of employees for at least 90 days after training as had been employed at 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”.
- 1.5 Rosters. Trainees and trainers must document attendance at each training session in the form and manner required 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. Contractor must upload/enter this data within 90 days of the date of training delivery.
- 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.
- 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 Charges to Trainees. Contractor understands that it cannot charge tuition, fees, or costs to trainees for training funded under this Agreement without prior written approval by the Executive Director of ETP.
- 1.14 Entrepreneurial Training. Training must be in entrepreneurial skills that are necessary for effective management of the trainee's business.
- 1.15 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 Estimated Number of Trainees in a Job Number;
 - c. Change the Occupations for trainees in a Job Number;
 - d. Redistribute the Estimated Number of Trainees/funding between Job Numbers;
 - e. Add to or delete training courses identified in the Exhibit B: Menu Curriculum;
 - f. Change or extend the term dates;
 - g. Revise range of hours so long as there is no change to the per-trainee cap on hours.

If ETP approved a Modification pursuant to (a) through (g) above, it will prepare a written Modification 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 up to 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 **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, including accounting source payroll documents, 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 **Subcontractor Identification.** Contractor must identify all subcontractors as they become known, prior to and during the term of this Agreement, in the form and manner prescribed by ETP. In doing so, Contractor must provide at least the following information: business name and address; contact person name, title, address, phone and email; description of services to be provided, and fees or rate payable. Administrative services cannot exceed 13% of payment earned. See Section 1.2.
- 3.6 **Out-of-State Training.** Contractor will not be reimbursed for the cost of training delivered out-of-state without prior written approval by ETP.
- 3.7 **Out-of-State Vendor.** No training may be delivered by an out-of-state vendor without prior written approval by ETP. Contractor must provide ETP with written notice of proposed services by an out-of-state vendor at least seven working days in advance, in the form and manner prescribed by ETP.
- 3.8 **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.
- 3.9 **Forum State.** The parties agree that any legal action arising under this Agreement, including mediation or arbitration, shall take place in Sacramento, California.
- 3.10 **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.

- 3.11 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, or made as a Modification in accordance with Section 1.15. There can be no substantive amendments after the termination date of this Agreement.
- 3.12 Survival. The Audits, Recordkeeping and Governing Law provisions of this Agreement shall survive its termination.
- 3.13 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.
- 3.14 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.
- 3.15 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.
- 3.16 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 B: Menu Curriculum

Class/Lab Hours

00-000 Trainees may receive any of the following:

Use as needed:

Literacy Training cannot exceed 45% of total training hours per-trainee
Safety Training will be limited to 10% of total training hours per-trainee

E-Learning Hours

00-000

CBT Hours

00-000

Show standard number of hours for each CBT course in parentheses.

AT Hours

00-000

Only include methods of delivery approved in the ETP 130, in this Menu Curriculum.

Note: Reimbursement for retraining is capped at 200 hours total per-trainee, regardless of method of delivery.

Exhibit C: Subcontracts

1. The Employment Training Panel (ETP) is not a party to this Agreement. ETP is not obligated in any manner for any liability that may arise out of this Agreement. No third party relationship is intended or created with ETP under this Agreement.
2. Consultant agrees that ETP has the right, during normal business hours, to examine or audit any and all records, books, papers and documents related to the delivery of services, including all accounting source payroll documents, under this Agreement to the extent ETP deems necessary.
3. Consultant agrees that ETP has the right, during normal business hours, to freely observe and monitor the delivery of services under this Agreement with or without the Consultant's presence. In particular, Consultant agrees that ETP has the right to interview trainees, trainers and training personnel.
4. Consultant agrees to maintain all records and other writings that pertain to the delivery of services under this Agreement for a period of no less than 4 years from termination or 3 years from Fiscal Closeout, whichever is later.
5. This Agreement shall be governed by the laws of the State of California. If ETP is named as a party in litigation, arbitration or other proceedings in connection with this Agreement, the exclusive venue and place of jurisdiction will be the County of Sacramento in the State of California.
6. In the event of any conflict or inconsistency between the terms of this Agreement and the ETP Agreement, the latter shall govern and prevail.
7. In no event shall the administrative fees paid under this Agreement with ETP funds exceed 13% of payment earned for Retraining. As used herein, "payment earned" means the amount of reimbursement the Contractor is entitled to retain based on ETP Fiscal Closeout. [Section 4400(r).]

Note: These provisions must be incorporated into any Agreement (subcontract) between Contractor and a consultant for administration of the ETP-funded training project. These provisions need not be used verbatim, but any variation must be approved by the ETP Legal Office.

Exhibit D: Definitions

The parties agree that the following definitions shall govern performance under this Agreement. These terms are used in this Agreement, or may be referred to in the course of program administration by ETP.

Some definitions include references to regulations in Title 22 of the California Code of Regulations or to the Unemployment Insurance (UI) Code, as shown in brackets. The regulations and UI Code are available for review at the ETP website (www.etp.ca.gov).

Actual Cost-per-Trainee: The amount of reimbursement payable on a per-trainee basis at Progress Payment 2 (P2) and the Final Payment (F), based on the actual number of training hours completed.

Approved Amount: The maximum amount of funding approved by the Panel. This amount is distinct from Payment Earned.

Average Cost-per-Trainee: The average cost of training for each trainee enrolled in a given Job Number based on the planned hours of training and the fixed fee rate. This cost is used to calculate the first Progress Payment (P1) at the time of enrollment.

Classroom Training: Formal instruction in a classroom setting that is removed from the trainee's usual work environment, and provided on a regular basis under the constant and direct guidance of a trainer. [Section 4400(y)(1).]

CNA to LVN: Training designed to upgrade the skills of a Certified Nurse Assistant or similar caregiver under a Licensed Vocational Nurse program, leading to LVN licensure. [UI Code Section 10214.9.]

Computer-Based Training (CBT): Instruction provided through computer systems or software and delivered through an electronic medium such as the Internet, Intranet, LAN or CD-ROM. Trainees must participate from a suitable location in California. [Section 4400(ff).]

Curriculum: A list of approved training courses or modules under the Menu as shown in Exhibit B.

E-Learning: Instruction provided by a live trainer via a web-based system in real-time using interactive communication. This includes videoconference training. [Section 4400(y)(4)].

Eligible Employers: Employers are eligible for ETP funding if they are subject to payment of the Employment Training Tax. Employers that have elected an alternate method of financing liability for the payment of Unemployment Insurance benefits can only be eligible for the "incidental placement" of new hire trainees. There are other eligibility standards such as out-of-state competition, to be determined by the Panel on a case-by-case basis. [UI Code Section 10201(b).]

Enrollment: The process of registering a trainee with ETP as an eligible participant in ETP-funded training, once the first eight hours of training have been completed. Trainees are enrolled by Job Number. Once enrolled, they can participate in more than one approved course for that Job Number, on a sequential basis. [Section 4400(dd).]

Final Payment: Final payment is the final 25% payment based on the number of training hours completed for each trainee. Final payments (F) may be authorized and paid for each trainee after completion of training and the required post-training retention period specified in the Agreement. Each trainee must be employed full-time and must receive the minimum wage specified in the Agreement at the end of the employment retention period. Final Payments are reconciled with individual unearned progress payments and are not considered earned until the Fiscal Closeout of the Agreement.

Fiscal Closeout: The process by which ETP determines the actual amount of Payment Earned for all trainees, reconciling the Final Payment with the first two Progress Payments. ETP will give Contractor written Notice of any overpayment that results from Fiscal Closeout within a reasonable time after the term of this Agreement.

Frontline Worker: These are employees who directly produce goods or deliver services. In general they are eligible for overtime compensation, regardless of job title. Managers and Supervisors as defined below are not Frontline Workers. [Section 4400(ee).]

Full-time: Employment of at least 35 hours a week, with exceptions for special programs. [Section 4400(h).]

High Unemployment Area: A county or other distinct region of California where the unemployment rate exceeds the state average rate by a given factor, based on data from the Labor Market Information Division (LMID) of the Employment Development Department. The trainees in a High Unemployment Area (HUA) may qualify for a lower minimum wage, a modified Retention period, and/or the waiver of other requirements on a case-by-case basis. [Section 4429.]

In-Kind Contributions: The costs incurred by an employer under an ETP-funded project. These costs may be monetary, such as wages paid to trainees during the hours of training. Or, they may be non-monetary, such as the rental value of a facility or room that is made available for instructional purposes. [Sections 4400(l) and 4401.1.]

Job Number: The designation used to differentiate between categories of trainees, and types of training. By way of example, distinguishing factors include the minimum hours of training, the approved type of training, and the minimum post-retention wages.

Literacy Training: Basic, job-related skills including math, reading, and language skills necessary for the trainee's job performance and employment retention in a job with definite career potential and long-term security. [Section 4400(n).]

Managers and Supervisors: These are employees who primarily perform exempt job duties within the meaning of the federal Fair Labor Standards Act and state Labor Code Section 515, where "primarily" means more than one-half of the work time. In performing these duties, Managers and Supervisors must also: exercise discretion and independent judgment; influence policy; supervise at least two employees with the right to hire and fire; and earn no less than two times the state minimum wage. [Section 4400(ee).]

Mandatory Training: Training is mandatory when the employer leads trainees to believe their continued employment would be adversely affected by not attending; the subject matter is directly related to the job duties; and the trainee does not produce goods or deliver services during training. Trainees must be paid their usual wages during mandatory training. This training is usually conducted during regular working hours. [See *Division of Labor Standards Enforcement Manual* at Section 46.6.5, at www.dir.ca.gov.]

Multiple Barriers (MB): Two or more barriers to full participation in the workforce. The barriers may include mental or physical disabilities, illiteracy, limited English proficiency, limited math skills or some similar impediment.

Out-of-State Competition: The Panel will not fund any Retraining project, with the exception of Special Employment Training, unless it first determines that the trainee jobs are threatened by out-of-state competition. This determination is made on a case-by-case basis, using factors such as location of the corporate headquarters and revenue stream, except that a training project in manufacturing and certain other industry sectors classified under the North American Industrial Classification System, are deemed to meet this requirement. [Section 4416.]

Payment Earned: The amount of Reimbursement the Contractor is entitled to retain based on Fiscal Closeout. [Section 4400(r).]

Post-Retention Wage: The minimum hourly wage that must be paid to trainees at the end of the employment Retention period. [Section 4418.]

Preceptor Training: In “preceptor training” the trainee observes hands-on skills as performed by a licensed LVN, RN or other practitioner (i.e., preceptor). The trainer to trainee ratio is generally 1:1. During the second phase, the trainee performs the skills under the preceptor’s close supervision.

Priority Industry: Industry sectors that are “targeted” for training funds. Manufacturing, aerospace, biotechnology, high technology and agriculture are typical Priority Industries, they are identified in the Panel’s annual Strategic Plan. [UI Code Sections 10200(b) and 10205(d).]

Productive Lab Training: A type of practical Retraining whereby the instructor oversees an employee’s use of special equipment or application of particular skills, in the actual work environment, resulting in the production of goods or delivery of services for profit. A Productive Lab Training Plan must be approved in advance by ETP. Productive Lab is more suitable to production than service delivery, and would only be approved for New Hire training on a case-by-case basis.

Progress Payments: Progress payments are unearned cash flow payments authorized and paid at selected training and contract performance benchmarks. Progress payments may be paid after a trainee is enrolled and has completed 8 hours of training (P1), after a trainee has completed training (P2) and when a trainee is placed in qualifying employment with an eligible employer (P3) [New Hire participants only]. Progress payments may not exceed 75% of the cost per trainee based on the hours of training documented at completion of training. Progress payments are not considered earned until the completion of all contract performance requirements and reconciliation of payments at the Fiscal Closeout of the Agreement.

Reimbursement Rate: The flat rate per hour payable for different methods and types of training. In general, the rate differs between Class/Lab, Advanced Technology and Computer-Based Training, although special rates also apply to Priority Industry and Small Business training. There is a further distinction between rates for New Hire and Retraining. Rates include the cost of training and administration of the ETP-funded project. Rates are consolidated by Job Number to determine the average cost per-trainee and for other purposes related to payment disbursement.

Retention: The period of full-time employment required for a trainee or group of trainees after the end of training. Typically, Retention is for 90 consecutive days, although this period may be modified on a case-by-case basis. [Sections 4400(v), 4429.]

Retraining: Job-related vocational training provided to existing employees.

Roster: The hard-copy record that must be signed by each trainee and instructor to document attendance. For CBT, the supervisor must also sign a hard-copy record documenting that the trainee completed the standard number of hours needed for proficiency in the course. ETP reserves the right to approve the format of all Rosters.

Seasonal Industry: This industry must hire at least 50% of its workers on a cyclical basis, as in agricultural crop production. To be eligible for retraining reimbursement by ETP, employers in this industry must have retained at least 50% of the same seasonal employees for at least one season. [UI Code Section 10214.5(d).]

Simulated Lab Training: A type of practical training whereby the instructor oversees the use of special equipment or application of particular skills in a simulated work environment. This type of training does not require a special training plan, as compared to Productive Lab Training.

Small Business: For purposes of the Small Business Reimbursement Rate and other special considerations, a small business means 100 or fewer full-time employees in California, but no more than 250 worldwide. The business must be domiciled in California, and independently owned and operated. [Section 4400(w).]

Special Employment Training: Certain types of training designed to satisfy the Panel's funding priorities are funded as Special Employment Training (SET) projects. There is no out-of-state competition requirement for SET. There are different wage requirements for the trainees who are eligible to participate in SET. There may be modifications to Retention, and/or waivers of other requirements for eligible trainees, on a case-by-case basis. [Section 4409.]

Statutory Interest: Interest assessed on overpayments. An adjusted annual rate charged from the first day of the month after Contractor received the overpayment from ETP. [Section 4447.]

Trainee Eligibility: In general, trainees are only eligible to participate in ETP-funded training if they are unemployed (New-Hire training), or employed by an Eligible Employer with wages reported in California (Retraining). There may be other eligibility standards, such as "multiple barriers" for special funding, to be determined by the Panel on a case-by-case basis. [UI Code Section 10201(c).]

Turnover Rate: Average annual turnover for full-time employees in the prior calendar year, used to measure job security. The Panel may impose a "turnover penalty" when an employer has a Turnover Rate that exceeds 20%. With this penalty, the Panel may withhold 25% of payment earned for each trainee. Not all separations from employment are included in calculating turnover (i.e., retirements are not included). [Section 4417.]

Variable Reimbursement: Flexible reimbursement based on a minimum and maximum number of training hours, per-trainee. Trainees may complete any number of hours within

the range set forth under the Menu for a given Job Number. Trainees may be trained in one or all courses under the Menu, within the constraints of funding.

Videoconference Training: Classroom instruction provided by a live trainer that is broadcast to two or more locations in real time and interactive with interactive communication between each location through video, data, and audio. The standard trainer-to-trainee ratio (1:20) applies to each location. This training is paid at the class/lab rate as a form of E-Learning.

Voluntary Training: When training is voluntary on the part of employees, they are not required to be paid their usual wages during the hours of training. See definition of “mandatory training” above.

SAMPLE