

Tennessee Small Business Development Center

INDEPENDENT CONTRACTOR AGREEMENT

This **Independent CONTRACTOR Agreement** is entered into by and between Kingsport Chamber Foundation (the Host Institution) on behalf of its **Tennessee Small Business Development Center (TSBDC) at East Tennessee State University (ETSU) – Kingsport Affiliate Office**, hereinafter referred to as “CENTER” and _____ hereinafter referred to as “CONTRACTOR”, whose address is _____. The services of the CONTRACTOR are necessary to assist the CENTER in the performance of its grant agreement between the Tennessee Small Business Development Lead Center at Middle Tennessee State University and this Sub-Recipient Service CENTER, subject to continued funding. In consideration of the agreements and covenants set forth in this Agreement, the parties agree as follows:

- 1) **Scope of Work.** CENTER hereby retains CONTRACTOR to perform the services set forth in Attachment A, which is incorporated herein by reference. CONTRACTOR represents that it has sufficient staff available and that it has the background, training, experience, and any required licenses to perform properly the services to be delivered under this Agreement.
- 2) **Fees and Expenses.** CENTER shall pay to CONTRACTOR the agreed upon fee for the services performed, as set forth in Attachment A. CONTRACTOR will invoice CENTER for all services performed in accordance with the invoice schedule. Payment shall be made within 30 days of receipt of the invoice. Unless otherwise specifically provided for in this Agreement, all expenses shall be borne by the CONTRACTOR. To the extent CENTER agrees to reimburse CONTRACTOR for reasonable business expenses that are necessarily incurred by CONTRACTOR in the performance of the services under this Agreement, all expense reimbursement requests are subject to the standards set forth in the CENTER's Host Institution's Expense Reimbursement Procedures. Final payment shall be subject to CONTRACTOR's delivery to CENTER of all deliverables in form and substance satisfactory to CENTER. The invoice(s) must be signed by the CONTRACTOR and submitted to:

TSBDC at ETSU – Kingsport Affiliate Office

400 Clinchfield St., Ste. 100

Kingsport, TN 37660

- 3) **Term.** The term of this Agreement shall commence on _____, 2020, and shall end on December 31, 2020, unless terminated earlier as provided for in this Agreement. The parties may agree in writing to renew or extend this Agreement.
- 4) **Termination.** Either party may terminate this Agreement for any reason upon thirty (30) days' prior written notice to the other. If a party materially breaches this Agreement, the other party may terminate this Agreement effectively immediately upon written notice.

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- 5) **Independent CONTRACTOR.** It is expressly understood and agreed that, in the performance of activities contemplated by this Agreement, CONTRACTOR and its employees, agents and subcontractors will at all times act as an independent CONTRACTOR of the CENTER, and not as employees or agents of the CENTER. This Agreement does not constitute and shall not be construed as constituting a partnership, joint venture association, or other affiliation or like relationship between parties. Neither party shall have the right to obligate or bind the other in any manner whatsoever with respect to any third party, and nothing herein contained shall give or is intended to give any right to a third party. In no event will either party be liable for the debts or obligations of the other party, except as specifically provided herein. CONTRACTOR, and not the CENTER, shall be responsible for the acts of its subcontractors if CONTRACTOR engages subcontractors to perform any of its responsibilities under this Agreement.

CONTRACTOR represents and agrees that CONTRACTOR is customarily engaged in an independently established trade, occupation, or business of the same nature as the work to be performed under this Agreement. CONTRACTOR further represents and agrees that it will maintain that occupation or business for the term of this Agreement.

- 6) **Return of Property.** Upon termination of this Agreement, each party shall promptly return all property belonging to the other party and provided in connection with the performance of the party's responsibilities under this Agreement.
- 7) **Trademarks.** CONTRACTOR shall not use the name "CENTER," or its "Host Institution," or use any logo or insignia of or otherwise identify the CENTER or the Host Institution in any form of publicity, disclosure or sale without the prior written consent of the CENTER, which consent may be withheld, granted or rescinded by the CENTER in its sole discretion.
- 8) **Compliance with Laws and CENTER Policies.** CONTRACTOR, its employees, agents and subcontractors shall comply with all applicable federal, state and local laws, regulations and CENTER policies that relate in any way to CONTRACTORS of the CENTER or to the services provided by CONTRACTOR under this Agreement.
- 9) **Debarment, Suspension, Repayment of Federal Debt.**
a) CONTRACTOR certifies by signing this Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency.
b) CONTRACTOR certifies, by signing this Agreement, that neither it nor its principals are delinquent on the repayment of any federal debt.
- 10) **OMB Uniform Guidance Assurance.** CONTRACTOR assures Prime Recipient that it complies with OMB's Uniform Guidance (2 CFR §200) and that it will notify Prime Recipient of completion of required audits and of any adverse findings.
- 11) **Indemnification.** CONTRACTOR shall be solely responsible for any and all claims, damages and injuries caused by CONTRACTOR or CONTRACTOR's employees, agents or subcontractors arising out of or relating to this Agreement. CONTRACTOR agrees to defend, indemnify and hold the CENTER and its employees and agents harmless from any and all liability, claims, demands, suits, costs, charges and expenses, including without limitation

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attorneys' fees, arising out of or in any way related to the alleged acts or omissions of CONTRACTOR or its employees, agents, or subcontractors, including but not limited to claims of property damage, personal injury, death, CONTRACTOR's failure to perform any of its obligations under this Agreement, or any other statutory, contract or tort claims.

- 12) **CONTRACTOR Property.** CONTRACTOR, and not the CENTER, is solely responsible for the loss of, theft of, or damage to any property of CONTRACTOR or its employees, agents or subcontractors that occurs on CENTER property or in CENTER facilities.
- 13) **Care and Maintenance of CENTER Facilities and Equipment.** CONTRACTOR shall be responsible for the proper and adequate care and maintenance of CENTER facilities and equipment. CONTRACTOR agrees that in the event CONTRACTOR (or its employees, agents or subcontractors) damages any CENTER facilities or equipment, CONTRACTOR will bear the sole financial responsibility for such damage. Additional costs may be charged by CENTER to CONTRACTOR for any damage to CENTER facilities or equipment. Such additional costs shall be due and payable by CONTRACTOR to CENTER within ten (10) working days of CONTRACTOR's receipt of an invoice for the additional costs.
- 14) **Taxes and Withholding.** CONTRACTOR understands that the CENTER will issue to it a Form 1099 in connection with the payment for services provided under this Agreement. CONTRACTOR shall be solely responsible for the payment of any and all taxes due as a result of the payments received for services provided under this Agreement. CONTRACTOR agrees and understands that CENTER will comply with all applicable Tennessee laws.
- 15) **Confidentiality.** CONTRACTOR agrees that it will not publish or disclose (nor allow to be published or disclosed) any confidential or proprietary information of CENTER or its clients to any person who is not an employee of CENTER or to any entity other than CENTER, without the express written approval of an officer of CENTER.
- 16) **Entire Agreement.** The parties declare and represent that no promise, inducement or agreement not herein expressed has been made to them and that this Agreement contains the full and entire agreement between and among the parties relating to the subject matter herein, and that the terms of this Agreement are contractual and not a mere recital.
- 17) **Amendment/Severability.** This Agreement may not be amended, except through a writing signed by CONTRACTOR and an authorized representative of the CENTER and its Host Institution. If any provision of this Agreement, or part thereof, is held invalid, void or voidable as against public policy or otherwise, the invalidity shall not affect other provisions, or parts thereof, which may be given effect without the invalid provision or part. To this extent, the provisions, and parts thereof, of this Agreement are severable.
- 18) **Assignment.** The rights and responsibilities under this Agreement are not assignable or transferable.
- 19) **Choice of Law.** This Agreement shall be governed by the laws of the State of Tennessee.
- 20) **Signatures.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute a single agreement

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binding on the parties. This Agreement will be considered executed by a party when the signature of such party is delivered physically, by email or facsimile transmission to the other party. The parties agree that any signature delivered by email or facsimile transmission shall have the same force and effect as an original signature.

- 21) **Force Majeure.** Neither party shall be responsible for any delays or failure to perform its responsibilities under this Agreement due to acts of God, strikes, war, insurrection, embargoes, governmental restrictions, acts of government or governmental authorities, other disturbances, or other causes of any kind beyond the control of the party.
- 22) **No Third Party Beneficiaries.** This Agreement shall be binding upon and inure to the benefit of and be enforceable only by the parties to this Agreement. No third party shall be a beneficiary of or have any right to enforce the terms of this Agreement.
- 23) **Notifications.** In performing services hereunder, the CONTRACTOR shall report to:

Aundrea Wilcox
TSBDC Service Center Director

Phone: 423-392-8800

400 Clinchfield St., Ste 100
Kingsport, TN 37660
Address

Fax: N/A

Email: awilcox@tsbdc.org

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24) **Authority.** By signing below, the representative from each party represents that he/she is duly authorized to sign the Agreement on behalf of either the CENTER or CONTRACTOR.

In witness whereof, the parties have executed this Agreement as of the dates set forth below.

CONTRACTOR

CENTER

Signature

Signature

Name (Printed)

Name (Printed)

Title

Title

Date

Date

Email:

Email:

Host Institution

Signature

Name (Printed)

Title

Date

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INDEPENDENT CONTRACTOR AGREEMENT ATTACHMENT A

Scope of Work:

The Independent CONTRACTOR agrees to provide the following services:

1. Consulting/Advising
 - 1.1. Provide one-to-one consulting to TSBDC clients focusing on 1) success of the enterprise and, 2) attaining the CENTER TSBDC goals; including but not limited to:
 - 1.2. Participating in CENTER activities and providing feedback to entrepreneurs who are preparing to present their companies to potential investors.
 - 1.3. Counsel clients to lead their organizations through the various stages of the business development cycle.
 - 1.4. Identifying, managing and mitigating client issues, challenges, and problems.
 - 1.5. Efficiently utilizing TSBDC resources and the resources available through other organizations with similar mission to benefit the needs of clients.
 - 1.6. Manage the client relationship, including but not limited to: client meetings, client homework/assignment(s), follow-up appointment(s), accountability, network development, and milestone attainment.
2. Training/Instruction
 - 2.1. Create, facilitate, speak and/or participate in workshops, training, seminars, webinars, training videos, and conferences.
 - 2.2. Provide information to be used in marketing and outreach in a timely manner.
 - 2.3. Create, review and analyze feedback and evaluation mechanisms for training and workshops.
 - 2.4. Incorporate feedback in future event planning as part of continuous improvement focused on the client experience and the impact of training on the success of the business.
3. Documentation of Effort/Program Improvement
 - 3.1. Develop, document, and when appropriate share consulting methodologies and best practices.
 - 3.2. Provide updates on achieving lead metric performance.
 - 3.3. Secure client signature (physical or electronic) for new clients using SBA form 641 Request for Counseling
 - 3.4. Provide the CENTER initial and follow-on client counseling information in MS Word docx format regarding client achievements including, but not limited to:
 - 3.4.1. Session notes
 - 3.4.2. Scope of Work
 - 3.4.3. Milestones
 - 3.4.4. Milestone Reports
4. Client Development/ Program Outreach
 - 4.1. Assist with business community outreach to further expand the awareness for TSBDC capabilities, including but not limited to:
 - 4.2. Attending events

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4.3. Developing target client lists

4.4. Reaching out to potential high value entrepreneurs and organizations.

Fees for Services:

The Maximum fees that can be charged the CENTER for client services and conducting business training events shall not to exceed \$_____ during the contract period.

CONTRACTOR fees for services will include:

- \$_____ per hour for each hour of business event training provided.
- \$_____ per hour for preparation. CONTRACTOR will be paid one half hour of preparation of each hour of instruction.
- \$_____ per hour for consulting and advising.

Invoice Schedule:

CONTRACTOR will invoice CENTER no later than the 5th of each month for completed services. Invoices will be submitted to the Director of the Small Business Development Center. Refer to the CENTER named on page 4 of the agreement.

CONTRACTOR shall be compensated for allowable costs per the “fees for services” section above. CONTRACTOR shall submit by email an itemized invoice in an MS Word.docx format showing dates of service covered by the invoice, client name(s) with a write-up of assistance provided, Training Event name(s) approved budget categories, expenditures for the period covered by the invoice, and cumulative expenditures to date. Payment will be made within thirty (30) business days upon receipt of the detailed invoice with client write-up(s), and approval by the CENTER Director.

All invoices submitted must contain the following certification statement:

“I certify that all expenditures are for appropriate purposes in accordance with the provisions of the Independent CONTRACTOR Agreement.”

All payments made under this Agreement shall be subject to audit. Final invoices must be marked “final” and must be received no later than 30 days after contract end date or completion of services, whichever comes first.

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