AGREEMENT
For
Instructional Services
Through the
Between
XXXXX XXXXXXXXXXXX XXXXXXXXXXXX
And
Members of the XXXXXXXXXXXXXXXX as Specified

Preamble:
XXXXXXXXXXXXXXXXXXXXX XXXXXXX XXXXX XXXXXXXXXX is a public institution of higher education and a political subdivision of the State of Texas. XXXXX currently operates in XXXXXXX Counties and has its main administrative office located at XXXXXXX. As a governmental entity, XXXXX possesses immunity for the torts and negligence of its officers, employees and agents and no such officer, employee, or agent shall empower to waive such immunity or cause XXXXX from being estopped from claiming such immunity. XXXXX is committed to providing the citizens, governments, or community and business entities it serves with quality educational, vocational and technical training and related services.

WITNESSETH THAT:
WHEREAS, the CONTRACTOR XXXXX desires to engage the SERVICE AGENTS SPECIFIED to render adult basic education, adult secondary education and English as-a-Second Language services to adult learners as defined under section 231 of the Adult Education and Family Literacy Act, P.L. 105-220 Title II, by the Texas Education Code, Chapter 29, Subchapter H, Section 29.251 et. seq., The Personal Responsibility and Work Opportunities Reconciliation Act of 1996 and the Texas State Plan for Adult Literacy from TEA, and the SERVICE AGENTS SPECIFIED desire to perform such services;

NOW THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:
I. ALLOCATION

Funds under this AGREEMENT are federal and/or state funds as indicated and described in the body of this document. The total allocation figures may be increased or decreased during the course of the project period as is within the authority of the fiscal agent, budgetary restraints, guidelines of this AGREEMENT and policies of the Texas Education Agency and the XXXXX. The total beginning allocation for the SERVICE AGENTS SPECIFIED for this AGREEMENT is for $ XXXXX of federal adult education funds and $ XXXXX state adult education funds, $ XXXXX of federal funds to benefit institutionalized and corrections clients and including $ XXXXX of federal and state TANF funds. The performance of the items agreed to in this document will take place from July 1, 2008 to June 30, 2009 for all federal funds except TANF federal funds which will take place from October 1, 2008 to September 30, 2009. State adult education and TANF state activities will occur from September 1, 2008 to August 31, 2009. This agreement may be extended by mutual agreement subject to appropriate actions by the Texas Education Agency. The following is provided in compliance with the Department of Education Appropriations Act, Texas Education Agency Grant Application procedures, and XXXXX AGREEMENT provisions.

II. SCOPE OF SERVICE

The SERVICE AGENTS SPECIFIED, during the term of this AGREEMENT, will provide eligible instructional services to adults under the Texas Education Agency grant funded adult education programs of the CONTRACTOR. These instructional services shall be provided pursuant to consistent courses of study and activities that record student profile, recruitment, retention and the measurement of student progress data.

The SERVICE AGENTS SPECIFIED shall provide these instructional services at the English-as-a-Second Language (ESL), Adult Basic Education (ABE), and Adult Secondary Education (ASE) functional levels designated to the number of individuals indicated more or less for a total of at least 8,809 individuals funded from federal adult education and state adult education sources, 144 individuals funded from federal institutionalized and corrections sources and 244 individuals funded from federal and state TANF adult education sources, as an unduplicated count of eligible out-of-school adult participants during the term of this AGREEMENT. Unduplicated is
defined as participants who have not previously been counted during the current federal reporting for the purposes of this AGREEMENT. The SERVICE AGENTS SPECIFIED shall document efforts to recruit adult learners in sufficient numbers to meet the enrollment goals of this AGREEMENT. Moreover, each course offered by the SERVICE AGENTS SPECIFIED should have a minimum average daily attendance of 15 students or such number that renders course cost to be effective.

The SERVICE AGENTS SPECIFIED shall plan, implement and operate an instructional program structured to meet and exceed the following performance objectives:

1. Participate in coordinated Outreach and Recruitment activities to achieve or exceed the minimum enrollment levels recorded in the service chart contained within this document.

2. Attain the following Retention goals:

   75% of the adult learners enrolled will have participated in baseline assessment and will have attended at least 12 hours of instruction.

   67% of the adult learners enrolled who have completed baseline assessment and will also complete progress assessment.

3. The SERVICE AGENTS SPECIFIED will meet the following goals for Demonstrated Gain and Completion.

   Demonstration of Learning Gain is the percent of the number of adult students whose individual progress subtest scale scores indicate that they have at least completed the functional level indicated by their original baseline subtest scores.

   Demonstration of Learning Gain is measured for each of the participants’ applicable subtests.

To calculate the percentage for Demonstrated Learning Gain, the number of students who have demonstrated gain from baseline to progress in each individual subtest assessment (e.g. Reading, Oral Interview) is divided by the total number of students who have participated in progress assessment for each individual subtest.

Providers are expected to meet or exceed the outcome standards expressed below.

Performance Benchmarks for Demonstration of Learning Gain.

<table>
<thead>
<tr>
<th>ESL</th>
<th>ABE/ASE</th>
</tr>
</thead>
<tbody>
<tr>
<td>BEST Oral Interview: (70%)</td>
<td>TABE Reading: (56%)</td>
</tr>
</tbody>
</table>
BEST Literacy Skills: (58%)  TABE Language (58%)
TABE Math: (58%)

**Completion of a Functional Level** is a percentage of students whose progress assessment score indicates they have completed their placement functional level when compared to their baseline placement score. Student functional placement level is determined by the lowest functional level indicated by the students’ respective assessment test scale scores.

To calculate the percentage for **Completion of a Functional Level**, the number of students who have at least completed their placement functional level is divided by the total number of students originally placed in that same functional level.

The chart below represents the percentage of students expected to complete each functional level:

<table>
<thead>
<tr>
<th>ESL:</th>
<th>ABE:</th>
<th>ASE:</th>
</tr>
</thead>
<tbody>
<tr>
<td>46% Beginning Lit.</td>
<td>48% Beginning Lit.</td>
<td>56% Low</td>
</tr>
<tr>
<td>54% Low Beginning</td>
<td>42% Beginning</td>
<td>NA High</td>
</tr>
<tr>
<td>52% High Beginning</td>
<td></td>
<td></td>
</tr>
<tr>
<td>55% Low Intermediate</td>
<td>41% Low Intermediate</td>
<td></td>
</tr>
<tr>
<td>44% High Intermediate</td>
<td>34% High Intermediate</td>
<td></td>
</tr>
<tr>
<td>40% Advanced</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4. The SERVICE AGENTS SPECIFIED will meet the following federal and state measures, as appropriate for the applicable level of instruction offered;

A) **88%** of all participants who have the goal of achieving a GED or high school diploma.

B) **60%** of all participants enrolled in Adult Secondary Education will achieve a GED or diploma within the fiscal year.

C) **25%** of all participants with a goal of entering postsecondary education or training, participants will enter postsecondary education or training during the fiscal year.

D) **68%** of all participants who were unemployed at the time of enrollment and had a goal of obtaining employment will enter unsubsidized employment by the end of the first quarter after the quarter from which they exited the program.
E) 70% of all participants who were employed at the time of enrollment will retain employment in the third quarter after the quarter from which they exited the program.

The SERVICE AGENTS SPECIFIED will also comply with the following operational features of this AGREEMENT:

1. The SERVICE AGENTS SPECIFIED will use student portfolios as a self-assessment tool by the learners and to give instructional staff insight into the needs and progress of the students through the learners' eyes.

2. The SERVICE AGENTS SPECIFIED will commit to incorporate real world competencies into its delivery system, will introduce staff to the Equipped for the Future (EFF) model for adult education and encourage staff participation in EFF training.

3. The SERVICE AGENTS SPECIFIED will participate in monthly and other periodic meetings of the Consortium's Advisory Committee and to participate in subcommittees of the Consortium's Advisory Committee as needed.

4. The SERVICE AGENTS SPECIFIED will plan implement and operate an instructional program designed to generate XXXXX contact hours funded by federal adult education and state adult education sources, XXXXX contact hours funded by institutionalized and corrections sources and XXXXX contact hours funded by TANF adult education sources collectively as well as meet respective contact hour goals.

5. The SERVICE AGENTS SPECIFIED will plan implement and operate an instructional program designed to provide a cost per student of XXXXX more or less with an average student attendance rate of XXXXX during the AGREEMENT’S performance period. The cost per student and average student attendance will differ for the institutionalized and corrections sources as well as the TANF adult education sources.

6. The SERVICE AGENTS SPECIFIED will develop and submit as part of this AGREEMENT, a detailed budget indicating position compensation rate by location, class schedule indicating total number of instructional hours planned by location, and other projected eligible operational expenses. In no case may the planned budget exceed that of the allocation amount indicated in this AGREEMENT. Instructional program design must be reasonable and capable of meeting the performance goals and program design requirement set out in this document. The detailed budgets planned and submitted by the SERVICE AGENTS SPECIFIED are included as attachments.
7. The SERVICE AGENTS SPECIFIED will utilize instructional staff that possess at least a bachelor's degree from an accredited college or university or have had that requirement waived by the Texas Education Agency or by State rule. **Instructional staff and volunteers who generate student contact time working in adult education before September 1, 1996 are waived from this requirement.** SERVICE AGENTS SPECIFIED must maintain local documentation verifying the employment status prior to September 1, 1996 of waived staff. A listing of waived staff is included in this document as a separate attachment.

8. All documentation regarding students, staff, and staff development activities required by TEA, XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXX XXXXX XXXXXXXXXXXXX or other evaluative method included in the application for funding will be provided, accurately and completely, in a timely fashion. Duplicative and unnecessary reporting systems will be discouraged. Failure to provide said information will result in delays or withholding of reimbursements. Failure to provide the fiscal and/or program documentation needed to monitor the program’s quality and accountability will: (1) result in a delay or withholding of the reimbursement process, (2) jeopardize the SERVICE AGENTS SPECIFIED from continued participation in the consortium, (3) allow for a recommendation from the Steering Committee or the fiscal agent staff for the termination of the AGREEMENT between one or more of the SERVICE AGENTS SPECIFIED and the CONTRACTOR or the de-obligation and reapportionment of any unused funds allocated for service under this AGREEMENT.

9. The SERVICE AGENTS SPECIFIED shall exercise responsibility for the professional development requirements for staff in this project in order to accomplish the instructional goals of the project and satisfy fiscal compliance standards as outlined below. The CONTRACTOR shall be responsible for (1) preparing, providing or identifying staff development opportunities for all project staff, (2) communicating such opportunities to the SERVICE AGENTS SPECIFIED (3) reporting to TEA staff participation in staff training directly provided as well as qualified activities identified by the SERVICE AGENTS SPECIFIED, and (4) for fulfilling reimbursement procedures related to staff expenses. The SERVICE AGENTS SPECIFIED will report staff professional development hours on the Inservice Hours Form and submit such forms along with reimbursement request documents on a monthly or other basis mutually agreed upon. Personnel forms must be provided to the XXXXXX Staff Development Office at the beginning of the fiscal year for all continuing staff and within the first two weeks of employment for newly hired employees. **All project staff will complete six (6) hours of preservice prior to beginning employment.** All teacher aides, and those supervisory and instructional staff holding a Texas Teacher's Certificate or having at least two years of adult education experience will also attend at least 12 hours of inservice by June 30, 2009. **Such staff members lacking a teaching certificate or two**
years experience will obtain 24 hours of inservice by June 30, 2009. Pre-service and in-service standards and procedures apply to volunteer staff as well as project employees. No reimbursements will be made by the CONTRACTOR in FY 2008-2009 based on expenses for staff that had not fulfilled professional development requirements during FY 2007-2008.

Information pertaining to preservice completion must be submitted with the reimbursement package in the month following the month containing the date of hire. If the SERVICE AGENTS SPECIFIED do not show evidence of a new hire’s participation in XXXXX pre-service within three (3) weeks of the hiring date, reimbursement for that staff member’s salary by the CONTRACTOR will be curtailed and payment of that person’s salary and benefits will become the exclusive responsibility of the SERVICE AGENT. Those staff members who have not achieved at least 75% of their required inservice hours by April 30, 2008 will not qualify for reimbursement to the SERVICE AGENTS SPECIFIED until they fulfill that requirement.

10. The SERVICE AGENTS SPECIFIED benchmark projections listed in this document previously will be monitored by the CONTRACTOR and the XXXXX (the Steering Committee). The SERVICE AGENT will provide timely documentation and submission of the proper paperwork including but not limited to the Monthly Attendance Reports, the Monthly Performance Reports, Fiscal Cost Reimbursement documents, Student Enrollment and Outcome forms, and Student Evaluation of Program forms.

11. The CONTRACTOR will serve as fiscal agent. The SERVICE AGENTS SPECIFIED will cooperate in the CONTRACTOR’s efforts to perform its following administrative duties to:

* manage the expenditure of funds and allowable costs,
* process reimbursements requests in a timely manner,
* provide program operation orientation and technical assistance,
* monitor compliance with program regulations,
* monitor program quality and performance,
* monitor quality of participant and assessment data,
* compile and submit financial reports,
* compile and submit annual performance reports,
* conduct other administrative activities as appropriate.

12. The SERVICE AGENTS SPECIFIED respective organizations will be evaluated on a quarterly basis using the criteria set forth via the XXXXX XXXXXX, criteria set out in the body of the federal adult education section 231 and state adult education program application, and other criteria as set out by XXXXX, the Steering Committee, and TEA. When such benchmarks are not met, technical assistance will be given to help the SERVICE AGENTS SPECIFIED to explore avenues to increase the pertinent performance criteria to acceptable levels. This technical advisement process will be based on
performance in each quarter. If advisement does not result in sufficient improvement by the end of the next quarter, the fiscal agent XXXXX with the recommendation of the Consortium’s Steering Committee, may de-obligate the remaining funds from organizations performing below expectations and reallocate them to agencies on a competitive basis based on performance without the need for the CONTRACTOR to exercise its option to terminate the AGREEMENT.

The objectives listed above and in the application for these funds are subject to modification pursuant to Texas Education Agency clarification in the course of the program year. All objectives as announced in the application become objectives for the SERVICE AGENTS SPECIFIED to pursue respectively and achieve in tandem with the remaining members of the XXXXX.

III. OBJECTIVES AND REGULATIONS

In addition to the technical and regulatory assurances included in the application, the SERVICE AGENTS SPECIFIED will cooperate with the successful operation of the program as set out in the application and approved by the Texas Education Agency (TEA). The SERVICE AGENTS SPECIFIED affirm that these funds are used to supplement current and past service and not to supplant them and evidence to this effect will be shown upon request to XXXXX, TEA or other applicable audit authorities.

IV. BUDGETING, PERFORMANCE AND TECHNICAL ASSISTANCE

The process for administering the activities of the above-mentioned paragraph will be as follows:

1. The SERVICE AGENTS SPECIFIED have developed, herein, a requested budget for the AGREEMENT’s performance period.

2. The SERVICE AGENT’S SPECIFIED initial conditional AGREEMENT will be for fourteen months, July 1, 2008 - August 31, 2009.

3. The SERVICE AGENTS SPECIFIED will develop written plans to operate for the performance period. Continuation of the AGREEMENT will be contingent upon performance in each quarter. Lack of performance in any quarter may lead to de-obligation or termination of the AGREEMENT for individual SERVICE AGENTS at the end of the next quarter. This clause will not waive any other rights of termination by either of the two parties.

4. The relevant information regarding accounting is included in the Assurances and Certifications attached hereto and the Financial Accounting and Reporting
5. The SERVICE AGENTS SPECIFIED will maintain separate documentation for fiscal and program aspects of the programs funded through different grants. All such documentation will be made available for monitoring by XXXXX, TEA, and other auditing entities. This includes all documentation mentioned in this document and the application (including, but not limited to portfolios, accounting, etc.) Not allowing the CONTRACTOR to access such records is cause for the CONTRACTOR to terminate the AGREEMENT.

6. If any of the SERVICE AGENTS SPECIFIED did not meet the 2007-2008 program year benchmarks but came close enough to be a part of this application process, it will receive technical assistance to help enable the SERVICE AGENTS SPECIFIED to meet 2008-2009 program year benchmarks. Technical assistance will come from the Steering Committee, the CONTRACTOR staff, and Technical Assistant(s) employed for the purpose. Areas addressed will include recruitment, retention, orientation, program management and instructional program restructuring issues. Following the delivery of technical assistance, the SERVICE AGENTS SPECIFIED are responsible for implementing a plan that will improve its performance based on the recommendations it received during the technical assistance period.

7. The SERVICE AGENTS SPECIFIED will have until December 31, 2008 to demonstrate acceptable progress toward meeting benchmarks for the 2008-2009 program year. SERVICE AGENTS SPECIFIED that are not performing or billing in proportion to the portion of the year elapsed will be required to produce a plan of action to show how AGREEMENT obligations will be completed during the AGREEMENT period.

8. AGREEMENTS for the SERVICE AGENTS SPECIFIED participating under the technical assistance format as defined under paragraph 6 above that are not making adequate progress toward meeting program year 2008–2009 benchmarks will not be continued for the second half of the program year or may be continued at a reduced rate. Any remaining funds that were originally allocated to the SERVICE AGENTS SPECIFIED may be reappropriated to the remaining consortium members individually or severally by the CONTRACTOR.

As is indicated above, unacceptable performance on quarterly reviews may lead to the de-obligation of the SERVICE AGENTS SPECIFIED remaining budgets, following unsuccessful technical assistance. The results documented following intensive technical assistance rendered after review of the SERVICE AGENTS SPECIFIED proposed action plan for corrective action will be the basis for Steering Committee or the CONTRACTOR
recommendation for partial or complete de-obligation of the remaining funds of the SERVICE AGENTS SPECIFIED. This process is performance based and does not affect the rights of the parties to sever their relationship under this AGREEMENT for noncompliance causes or under any other clause contained herein.

V. DOCUMENTATION OF STAFF TIME

All personnel must be paid according to staff time and efforts records or other attendance roster. If staff persons are paid for time outside of the classroom, this activity must be documented in a log showing place visited, time spent, activity undertaken, and benefit to the program. Technical assistants, counselors, recruiters, and orientation personnel need to accurately and completely document their time and effort and clearly describe activities and so that the SERVICE AGENTS SPECIFIED, the Steering Committee, and the CONTRACTOR can view the efficacy of the employee’s activity. This will ensure that instructional funds are used effectively for instructional activities. All staff working on projects paid through more than one funding source must complete a time and effort record to apportion their salary reasonably among individual projects. These time and effort records must be submitted with reimbursement documents.

VI. FUNDING

The CONTRACTOR shall reimburse the SERVICE AGENTS SPECIFIED for the services on a cost reimbursement basis as set forth in Attachment B - Compensation and Method of Payment Schedule or other method approved by TEA and accepted by the CONTRACTOR. Performance indicators are a part of the reimbursement conditions and may also affect total funding as per section II above. Reimbursement payments requested under this AGREEMENT are limited to those amounts for allowable INSTRUCTIONAL expenses specified in Attachment B - Compensation and Method of Payment Schedule and as defined in the job descriptions submitted by the SERVICE AGENTS SPECIFIED and further are expressly subject to the availability and receipt of funds by the CONTRACTOR from the Texas Education Agency and designated for the aforementioned educational services to adults enrolled in the program herein described. This AGREEMENT shall be rendered void if the CONTRACTOR does not receive these funds from the Texas Education Agency for any reason. It is further understood that only those items specifically agreed upon in the terms and conditions of this AGREEMENT shall be
reimbursed by the CONTRACTOR to the SERVICE AGENTS SPECIFIED in accordance with Attachment B - Compensation and Method of Payment Schedule and with the reimbursement guidelines provided by the CONTRACTOR, that include submittal of complete and accurate monthly attendance reports, performance reports and any other documents reasonably requested by the CONTRACTOR prior to reimbursement. Any cash advances given by the CONTRACTOR to the SERVICE AGENTS SPECIFIED will not exceed 12.5% of the total amount allocated to the SERVICE AGENTS SPECIFIED under this AGREEMENT and will be consumed by deducting a like percentage from each reimbursement request so that the cash advance is repaid at the end of the fiscal year. The reimbursement policy of the CONTRACTOR is attached hereto, but is subject to change upon 10 working-days notice by the CONTRACTOR. It is also understood that this time frame is a guideline and will be facilitated by the CONTRACTOR’s Community and Adult Education Department, but that issuance of the reimbursement check may be delayed at any point after documentation leaves its offices; thereby making the process longer than anticipated. In these cases the CONTRACTOR will be held harmless.

The SERVICE AGENTS SPECIFIED will be reimbursed up to the AGREEMENT amount of indicated on the service chart contained in the body of this document as per the reimbursement process policy, or any XXXXX approved procedures communicated to the SERVICE AGENTS SPECIFIED after ten (10) working days notice.

VII. TIME AND PERFORMANCE

This AGREEMENT shall commence and take effect on the date it is executed by the appropriate representatives for both parties and continuing through June 30, 2009 (pending notification of extension for the second 6 month period), and this AGREEMENT shall provide the powers and duties of the parties for the federal fiscal year beginning July 1, 2008 and concluding on June 30, 2009. The TANF/Federal fiscal year will begin October 1, 2008 and conclude on September 30, 2009. The appropriate representative for the CONTRACTOR shall be XXXXX. Signatory for the SERVICE AGENTS SPECIFIED must be authorized to legally bind the organizations of the SERVICE AGENTS SPECIFIED. Final requests for reimbursement covered under the terms of this AGREEMENT must be submitted with appropriate documentation no later than five (5) working days following the conclusion of the AGREEMENT, i.e., (following December
31, 2008 if the first 6-month period is not extended and following June 30, 2009 if said AGREEMENT is extended.) Negotiation of any amendment to this AGREEMENT is subject to availability of funds from TEA under the federal Adult Education and Family Literacy Act or subsequent federal legislation and available state funding as well as the need to provide instructional services by the CONTRACTOR.

VIII. REPORTS, MONITORING AND STAFFING

The SERVICE AGENTS SPECIFIED will submit to the CONTRACTOR periodically or upon request any documents that the CONTRACTOR reasonably deems necessary for reporting activities to the proper state and federal agencies and those documents necessary to reimburse the SERVICE AGENTS SPECIFIED described in Attachment – B - Compensation and Method of Payment Schedule. The SERVICE AGENTS SPECIFIED shall also provide documents on a monthly basis that the CONTRACTOR deems necessary to establish that the SERVICE AGENTS SPECIFIED are providing courses of study as defined in Section II of this AGREEMENT. Such documents shall include, but will not be limited to, sign-in sheets that are to be signed exclusively by students, instructional staff sign-in sheets, monthly performance reports, staff activity logs, and monthly attendance reports. Failure of the SERVICE AGENTS SPECIFIED respectively to provide the CONTRACTOR with the necessary documents shall relieve the CONTRACTOR of the obligation to reimburse the offending SERVICE AGENT. At least one performance indicator (contact hour generation) is a part of the reimbursement conditions. Lack of reasonable performance as determined by the CONTRACTOR shall be grounds for amending or canceling this AGREEMENT.

The SERVICE AGENTS SPECIFIED shall permit monitoring of its instructional activities and inspection of its documents by the CONTRACTOR, the Texas Education Agency, and federal auditors for compliance with federal, state and local guidelines.

IX. RIGHTS AND RESPONSIBILITIES

Included with this AGREEMENT are: Attachment A – Enrollment Goal, Contact Hour Goal and Funding Chart, Attachment B - Compensation and Method of Payment Schedule and Attachment C – Composite Budget Form. These Attachments are made a part of this AGREEMENT by reference and are incorporated into this AGREEMENT for all purposes.
During the term of this AGREEMENT, the CONTRACTOR may, at its option, terminate this AGREEMENT upon giving fifteen (15) working days written notice, in that event the CONTRACTOR shall be liable only for reimbursing instructional services performed by the SERVICE AGENTS SPECIFIED up to the date of termination provided that these services are actually rendered and provided the SERVICE AGENTS SPECIFIED to meets the obligation to provide documents within seven (7) working days of the termination date as required by this AGREEMENT. Furthermore, the SERVICE AGENTS SPECIFIED shall be required to surrender all documentation as well as any unused supplies and materials to the CONTRACTOR upon termination of this AGREEMENT.

Likewise, the SERVICE AGENTS SPECIFIED shall have the right to terminate this AGREEMENT upon giving fifteen (15) days written notice, in which event the SERVICE AGENTS SPECIFIED shall be liable to the CONTRACTOR only for the performance of services as set forth in this AGREEMENT through the date of termination and shall submit all documentation as agreed upon herein before final payment and/or reimbursement for services shall be made. Neither this AGREEMENT nor any duties or obligations hereunder shall be assignable by either party without the prior notice and written consent of the other party.

FURTHERMORE, it is hereby declared that this AGREEMENT is entered into for the express purpose of serving adult learners in a cooperative effort and is funded through the Texas Education Agency based upon the availability of federal adult education and state adult education program funds, which are state administered funds. Therefore, the SERVICE AGENTS SPECIFIED certify that this program will be conducted in accordance with all applicable federal, state and local laws and regulations.

By signing this AGREEMENT, the SERVICE AGENTS SPECIFIED assure TEA and XXXXX of direct responsibility for complying with all relevant regulations. In addition, the SERVICE AGENTS SPECIFIED will not discriminate in hiring or service on the basis of age, sex, race, national origin, religion, or disability. This signing also affirms that these funds are used to supplement current and past service and not to supplant them and evidence to this affect will be shown upon request to XXXXX, TEA or other applicable audit authorities. Any expenses (including attorney’s fees) incurred as a result
of grievances or complaints filed against the SERVICE AGENTS SPECIFIED or as the result of an act or omission of the SERVICE AGENTS SPECIFIED or any of its officers are the sole responsibility of the SERVICE AGENTS SPECIFIED respectively (including the expenses of the CONTRACTOR in defending against said complaint).

X. STATEWIDE MIS DATABASE AND REQUIRED ASSESSMENT

This AGREEMENT also binds the SERVICE AGENTS SPECIFIED to participating in the Texas Education Adults Management System (TEAMS) or other statewide adult education Management Information System, and being responsible for the expenses involved in documentation, input, and verification of student participant data. Use of federally funded hardware, software, printers, or any other ancillary equipment or devices must be in compliance with uses allowed for equipment so purchased. The same will be inventoried with XXXXX and revert to the fiscal agent for redistribution within the consortium if any of the SERVICE AGENTS SPECIFIED should cease to be a consortium member for any reason. The SERVICE AGENTS SPECIFIED also agree to implement and conduct according to each instrument’s protocol the standardized assessment system initiated by TEA for use of TABE and BEST testing materials for the required baseline and progress assessments for adult basic education/GED and limited English proficient participants, respectively. **It is understood that only participants who have participated in the standardized baseline assessment will be eligible to be counted for service by the SERVICE AGENTS SPECIFIED and that participant outcomes are determined based on progress assessments.** The SERVICE AGENTS SPECIFIED agree to implement the above procedures as a compliance issue under this funding. Failure to do so may be considered as grounds for termination of this AGREEMENT or non-inclusion in the 2009-2010 application process.

XI. AUDIT AND EVALUATION

The CONTRACTOR reserves the right to conduct or cause to be conducted an independent audit of all funds received under this AGREEMENT, which may be performed by the internal audit staff, a certified public accounting firm, or other auditors as designated by the CONTRACTOR. The SERVICE AGENTS SPECIFIED shall cooperate with all authorized auditors and shall make available all accounting and program records including supporting source documentation. Such audit will be conducted in accordance
with applicable state rules and regulations, AGREEMENT guidelines, and established professional standards and practices.

The SERVICE AGENTS SPECIFIED shall be liable respectively to the CONTRACTOR for any costs disallowed as a result of an audit. The SERVICE AGENTS SPECIFIED shall further be responsible respectively for any audit exception or other payment deficiency in the program covered by the AGREEMENT, and all other AGREEMENTS hereunder, which are found to exist after monitoring, review, or auditing by any party as authorized by the CONTRACTOR.

The SERVICE AGENTS SPECIFIED or the auditors that monitor or audit the SERVICE AGENTS SPECIFIED shall immediately report to the CONTRACTOR any incidents of fraud, abuse or potentially criminal activity in relation to the provisions of this AGREEMENT.

It shall be the sole responsibility of the CONTRACTOR to enforce the guidelines and compliance issues set out in this AGREEMENT.

XII. RETENTION AND ACCESSIBILITY OF RECORDS

The SERVICE AGENTS SPECIFIED shall maintain all program records, financial management records and supporting documentation for all expenditures of funds made under this AGREEMENT, in compliance with all retention and custodial requirements for records referenced in this AGREEMENT.

The SERVICE AGENTS SPECIFIED shall retain all fiscal records and supporting documents for a minimum of five (5) years after AGREEMENT final closeout activities are completed. In the event there is litigation or an unresolved audit discrepancy at the end of such retention period, the records will be retained until the litigation or discrepancy is resolved. If any of the SERVICE AGENTS SPECIFIED should cease to continue as members of the consortium under funding through the CONTRACTOR as fiscal agent, said records will be transferred to the custody of the CONTRACTOR as provided by AGREEMENT or within 15 working days, whichever occurs first. Prior to the destruction or disposal of any records relative to this AGREEMENT, the SERVICE AGENTS SPECIFIED shall obtain written approval for such record destruction or disposal from the CONTRACTOR.
The SERVICE AGENTS SPECIFIED shall provide the federal auditors, state auditing agencies, the Texas Education Agency, the CONTRACTOR or any of their duly authorized representatives, access to and the right to examine, copy or reproduce all reports and records pertaining to this AGREEMENT. Such rights to access shall continue as long as said records are retained by the SERVICE AGENTS SPECIFIED respectively.

The CONTRACTOR shall have the right of timely and reasonable access to the premises and personnel of SERVICE AGENTS SPECIFIED for the purpose of inspection, monitoring, auditing, evaluation, or interview, related to all records required to be retained under this AGREEMENT.

XIII. SPECIAL PROVISIONS

THE CONTRACTOR RELATIONSHIP TO THE SERVICE AGENTS SPECIFIED

It is understood and agreed that the CONTRACTOR and any other party providing services for the SERVICE AGENTS SPECIFIED are independent contractors and neither the CONTRACTOR nor any employee or agents contracted by it shall be deemed for any purposes to be employees or agents of any other party. The AGREEMENT does not create a joint venture or business partnership under Texas laws. Each party assumes full responsibility for the actions of such personnel and volunteers while performing any services incident to this AGREEMENT and shall remain solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), worker’s compensation, disability benefits and like requirements and obligations.

NO WAIVER OF IMMUNITY

The CONTRACTOR neither waives nor relinquishes any immunity or defense on behalf of itself, its trustees, officers, employees, and agents as a result of its entering into this AGREEMENT and performance of the functions or obligations described herein.

AUTHORIZATION OF AGREEMENT

Each party represents and warrants to the other that the execution of this AGREEMENT has been duly authorized, and that this AGREEMENT constitutes a valid and enforceable obligation of such party according to its terms.
NO WAIVER

No waiver of a breach of any provision of this AGREEMENT shall be construed to be a waiver of any breach of any other provision. No delay in acting with regard to any breach of any provision shall be construed to be a waiver of such breach.

NOTICE

Any notice required to be given under the provisions of this AGREEMENT shall be in writing and shall be duly served when it shall be hand-delivered to the addresses set out above, or shall have been deposited, duly registered or certified, return receipt requested, in a United States Post Office addressed to the other party. Any method of notice electronic or otherwise is deemed acceptable if the receiving party acknowledges reception of such notice.

Any party may designate a different address by giving the other party prior written notice.

NO ASSIGNMENT

No assignment of this AGREEMENT or of any duty or obligation of performance hereunder shall be made in whole or in part by the SERVICE AGENTS SPECIFIED without prior written consent and approval by the fiscal agent.

GOVERNING LAW

This AGREEMENT is made in Texas and shall be construed, interpreted, and governed by the laws of such state. The parties consent to the jurisdiction and venue of the courts of XXXXX Texas, for any action under this AGREEMENT.

INDEMNIFICATION

The SERVICE AGENTS SPECIFIED agree to indemnify and hold the CONTRACTOR, its trustees and employees harmless from all claims and liabilities made against them arising from this AGREEMENT that result from the acts or omissions of the SERVICE AGENTS SPECIFIED, their agent, employees, independent contractors and students, or third parties, including attorney's fees and court costs.

EQUAL OPPORTUNITY

The CONTRACTOR seeks to provide educational opportunities without regard to race, color, religion, national origin, sex, age or disability. This policy extends to employment and admission requirements, as well as all programs and activities supported
by the CONTRACTOR. The SERVICE AGENTS SPECIFIED, by regulation, is held to the same standard.

**AGREEMENT TO TERMS**

The undersigned have read and agree to abide by all of the guidelines, clauses, and conditions relative to this AGREEMENT. This AGREEMENT is subject to the approval of the XXXXX and availability of funds.

_________________________        Date: ____________________
Attachment A

Enrollment Goal, Contact Hour Goal and Funding Chart
2008-2009 Federal and State Program
Composite Goal and Funding Chart

<table>
<thead>
<tr>
<th>Agency</th>
<th>Enrollment Goal</th>
<th>Contact Hour Goal</th>
<th>Federal Funding</th>
<th>State Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>XXXXX</td>
<td>1,833</td>
<td>183,268</td>
<td>$586,458</td>
<td>$146,615</td>
</tr>
<tr>
<td>XXXXX</td>
<td>393</td>
<td>39,303</td>
<td>157,212</td>
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</tr>
<tr>
<td>XXXXX</td>
<td>2,661</td>
<td>266,067</td>
<td>851,415</td>
<td>212,854</td>
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<td>XXXXX</td>
<td>502</td>
<td>50,242</td>
<td>160,775</td>
<td>40,194</td>
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<td>XXXXX</td>
<td>438</td>
<td>43,797</td>
<td>140,149</td>
<td>35,037</td>
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<tr>
<td>XXXXX</td>
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<td>28,888</td>
<td>115,550</td>
<td>NA</td>
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<tr>
<td>XXXXX</td>
<td>1,599</td>
<td>159,948</td>
<td>511,835</td>
<td>127,959</td>
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<tr>
<td>XXXXX</td>
<td>368</td>
<td>36,830</td>
<td>147,321</td>
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</tr>
<tr>
<td>XXXXX</td>
<td>369</td>
<td>36,943</td>
<td>147,772</td>
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<tr>
<td>XXXXX</td>
<td>230</td>
<td>22,977</td>
<td>73,527</td>
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<tr>
<td>XXXXX</td>
<td>127</td>
<td>12,700</td>
<td>50,742</td>
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</tr>
<tr>
<td>Grand Total</td>
<td>8,809</td>
<td>880,963</td>
<td>$2,942,756</td>
<td>$581,041</td>
</tr>
</tbody>
</table>
Enrollment Goal, Contact Hour Goal and Funding Chart

2008-2009 Federal TANF and State TANF Program

Composite Goal and Funding Chart

<table>
<thead>
<tr>
<th>Agency</th>
<th>Enrollment Goal</th>
<th>Contact Hour Goal</th>
<th>Federal Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>XXXXX</td>
<td>110</td>
<td>16,500</td>
<td>$83,203</td>
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<tr>
<td>XXXXX</td>
<td>134</td>
<td>20,100</td>
<td>101,693</td>
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<tr>
<td>Grand Total</td>
<td>244</td>
<td>36,600</td>
<td>$184,896</td>
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</tbody>
</table>

Enrollment Goal, Contact Hour Goal and Funding Chart

2008-2009 Federal Institutionalized and Corrections Program

Composite Goal and Funding Chart

<table>
<thead>
<tr>
<th>Agency</th>
<th>Enrollment Goal</th>
<th>Contact Hour Goal</th>
<th>Federal Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>XXXXX</td>
<td>144</td>
<td>14,400</td>
<td>$57,500</td>
</tr>
<tr>
<td>Grand Total</td>
<td>144</td>
<td>14,400</td>
<td>$57,500</td>
</tr>
</tbody>
</table>
COMPENSATION AND METHOD PAYMENT

The CONTRACTOR shall reimburse the SERVICE AGENTS SPECIFIED for the costs permitted by this AGREEMENT for the items designated in the attached detailed budget, provided such items are actually rendered and cost incurred for instruction of adults in the designated service categories at the time request for payment is made. This payment shall be based on the following rates and for a quantity and total amount per item that may not exceed the quantities and total amounts listed below. The maximum allowable payment shall not exceed the total amounts shown on this attachment. If a quantity of employees, supplies, materials or other goods or services are rendered that is less than the quantity listed below for an item, then the payment shall be at the amount for the rate multiplied by the lesser quantity rather than multiplied by the maximum allowable quantity. Reimbursement will be calculated either according to actual eligible expense or on a negotiated and agreed to reimbursement rate based on eligible staff time and effort.
ATTACHMENT D

WAIVED STAFF WORKING BEFORE SEPTEMBER 1, 1996
Previously approved in prior years by TEA through the grant approval process.

XXXXX