



# Commonwealth of Kentucky

## CONTRACT

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Record Date:

Document Description: Jefferson County Public Schools KYAE-2021-012

Cited Authority: KRS164.020-22  
Adult Ed Provider Agreements

Reason for Modification:

### Issuer Contact:

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### Vendor Name:

JEFFERSON COUNTY BOARD OF EDUCATION

3332 NEWBURG RD

LOUISVILLE KY 40218

### Vendor No.

KY0035849

### Vendor Contact

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Effective From: 2020-07-01

Effective To: 2021-06-30

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
1		0.00000		Core Services	\$0.000000	\$2,507,610.00	\$2,507,610.00

### Extended Description:

Provide services that comply with The Workforce Innovations and Opportunity Act, Title II and corresponding regulations, The Kentucky Adult Education Act of 2000 and with the current Kentucky Skills U Implementation Guidelines.

Budgeted source of funds: 70% state, 30% federal (CFDA 84.002 A, Adult Education State Administered Grant)

Method of payment: cost-reimbursement upon receipt and approval of monthly KYSU Expenditure Report submitted online. All costs must be reasonable, allowable and actual. County included Jefferson.

Effective From: 2020-07-01

Effective To: 2021-06-30

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
2		0.00000		Performance Funding	\$0.000000	\$131,979.00	\$131,979.00

### Extended Description:

Funding to enhance the delivery of Adult Education services and professional development.

Budgeted source of funds: 100% State; This is the maximum that could be earned. The final award amount will be based on final FY19 performance and

Method of payment: cost-reimbursement upon receipt and approval of monthly KYAE Expenditure Report submitted online. All costs must be reasonable, allowable and actual.

**Effective To:** 2021-06-30

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
3		0.00000		Federal Supplement	\$0.000000	\$470,818.00	\$470,818.00

Funds are to be used to aid in additional enrollments, retention efforts and to help programs produce additional results.

The funding is 100% federal WIOA Title II CFDA 84.002

<b>Shipping Information:</b>	<b>Billing Information:</b>
	Education & Workforce Development - Employee Services 275 E Main St  Frankfort KY 40621

<b>TOTAL CONTRACT AMOUNT:</b>	<b>\$3,110,407.00</b>
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	<i>Document Description</i>	<i>Page 3</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

**This agreement is made and entered into by and between the First Party, the Office of Adult Education, Kentucky Adult Education Skills U an agency of Education and Workforce Development Cabinet, referred to as “KY Skills U”, and the Contractor, hereinafter referred to as the Second Party.**

**The Second Party agrees to perform the following services:**

- A. Operate a program in compliance with the Plan of Service, Performance Measures and Budget(s). Individuals employed by the Second Party are considered employees of the provider, not KY Skills U; therefore the Second Party is responsible for any benefits accrued prior to the current grant year and pursuant to 42 U. S. C. § 418, all social security contributions;**
- B. Operate a program in compliance with the provisions of the Kentucky Adult Education Skills U Implementation Guidelines as amended from time to time, located in Kentucky Adult Education Reporting System (KAERS), and hereby incorporated by reference; and**
- C. Operate a program in compliance with the approved proposal, which is hereby incorporated by reference.**
- D. In the event of a declaration of national or state emergency, provision of distance learning services is expected to continue according to guidance from KYSU and federal sources. Student services includes the same services expected during times of “normal” operations for example but not limited to intake and orientation; student enrollment, instruction, support, and assessment; and data reporting.**

**The Second Party agrees to the following:**

**CONFIDENTIALITY**

- 1. Assure the confidentiality of all information, whether written, verbal or electronic, provided by or about any client seeking or receiving services under this contract, except as approved and authorized in writing by the**

	<i>Document Description</i>	<i>Page 4</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

**client, or as otherwise by law in accordance with the provisions of 5**

**U. S. C. § 552a which governs the release of public information.**

**2.(a) Use or permit access to the Kentucky Adult Education Reporting System Information Network (hereafter referred to as “KAERS”), an information system that allows for the transfer of data to accommodate the assessment of potential services and program eligibility, only for purposes specifically authorized;**

**(b)Provide to the First Party the completed Request for the KAERS Access form for any employee to be considered for access to the KAERS;**

**(c)Require all employees who have been trained and granted access by the First Party to the KAERS to read and sign a copy of the Employee Security Contract which is available in KAERS and is hereby incorporated by reference;**

**(d)Maintain a copy of signed security agreements in the personnel files of the respective employees and make copies available to KY Skills U Skills U or designated agent upon request;**

**(e)Ensure that only authorized employees are given access to the KAERS; and**

**(f)Instruct all employees with access to the KAERS regarding the confidential nature of the information, including the relevant statutes and regulations.**

**(g)Instruct all employees with access to KAERS to immediately report any suspected data breach or security incident to the fiscal agent, Director, Program Administration and Accountability, 502-892-3006.**

**(h)KRS 61.932 is the controlling law regarding data breach investigation and personal security protection.**

#### **B. INDEMNITY**

**The Second Party shall indemnify KY Skills U from any and**

	<i>Document Description</i>	<i>Page 5</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

**all loss, claims, expenses, actions, causes of action, costs, damages, and obligations, arising from any and all acts of the Second Party, its agents, employees, licensees, or invitees that result in injury to persons, corporations, partnerships, or any other entity. Also, it shall indemnify KY Skills U from any and all liability, loss, or damage that KY Skills U may suffer resulting therefrom. Provided, however, in the event the Second Party is a state agency or subcontracts for services with a state agency subject to the jurisdiction of the Kentucky Claims Commission pursuant to KRS 44.070 through KRS 44.160, the state agency's tort liability may be limited to an award from the Kentucky Claims Commission up to the jurisdictional amount. In the event the Second Party is legally prohibited from entering into an indemnity contract, the Second Party shall hold KY Skills U harmless from any and all loss, claims, expenses, actions, causes of action, costs, damages, and obligations, arising from any and all acts of the Second Party, its agents, employees, licensees, invitees, or participants that result in injury to persons, damage to property or loss arising from performance of this contract, to the extent permitted by law.**

#### **C. SUBCONTRACTING**

**The Second Party agrees not to subcontract services under this contract. All services identified within this contract are to be directly provided by the Second Party or one of its partners identified in its application for grant funding. Any substitutions or changes in partner responsibilities shall be approved by KY Skills U.**

#### **D. AUDIT**

**The Second Party shall procure, as to the completed contract, a single agency-wide audit, in accordance with and as required by, appropriate state and federal laws, regulations, and Federal Uniform Guidance documents, as applicable for fiscal agent's agency. The audit threshold is \$750,000 or more in annual aggregate federal financial assistance for all programs administered by the**

	<i>Document Description</i>	<i>Page 6</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

**Second Party. Federal financial assistance includes federal dollars received either directly from a federal agency or indirectly through a state or other agency. In the event that aggregate federal funding equals or surpasses the threshold, a single audit shall be required and the Second Party shall submit a copy of the audit report to KY Skills U no later than March 31, 2021. In the event that aggregate federal funding is less than \$750,000, written notification that an audit report is not required must be sent to KY Skills U no later than March 31, 2021.**

**Failure to comply with this section may result in payments being delayed or withheld.**

**In addition, KY Skills U may arrange for a comprehensive program and financial audit and/or follow-up audits of the Second Party. Significant or repeated issues identified in an audit may result in failure to renew a contract for the remainder of the grant period.**

#### **E. METHOD OF PAYMENT**

**The Method of Payment will be in accordance with guidelines implementing the federal Cash Management Improvement Act, Pub. L. 101-453, 104 Stat. 1058. This is a direct program cost reimbursement contract. Payment will be made based on reasonable, allowable, and actual costs incurred. All provider services of the second party (fiscal agent) will be reported to KY Skills U by the second party and on a county by county basis. KY Skills U does not permit the Second Party to charge indirect costs, or “overhead” charges, against this grant.**

**The Second Party understands that funds awarded under this contract are to supplement and not supplant—and cannot be used to provide services that would be otherwise available from another funding source or be available on a non-reimbursable basis. If travel expense is included, it shall be paid in accordance with the 2nd party’s policy and guidelines or, in the absence of such policy, in accordance with 200 KAR 2:006. Payment by KY Skills U to the Second Party, as well as the Second Party’s**

	<i>Document Description</i>	<i>Page 7</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

**continued performance, shall be subject to the availability of state or federal funds necessary to finance the provision of the services described in this contract.**

**The Second Party agrees to:**

- 1. Submit monthly expenditure reports to KY Skills U detailing expenditures of actual costs incurred using the on-line Expenditure Report form available in KAERS Finance Module and including detailed personnel expenditure on the Time Sheet Summary form on or before the 10th of each month following the month of services. Invoices received after the 10th shall be processed in the subsequent payment cycle. For programs administering more than one county, a report shall be submitted for each county individually, except where approved otherwise.**
- 2. Submit the final year-end on-line invoice detailing actual cost incurred no later than July 23, 2021 unless notified otherwise in writing by KY Skills U.**
- 3. Report only expenditures that are for goods received or services provided or received during the contract term and are determined allowable in compliance with the cost principles set forth in Federal Uniform Guidance documents. Encumbered but unexpended funds are not eligible for reimbursement unless the goods/services have been received by close of business June 30, 2021.**
- 4. Expenditures that exceed the approved budget line are not eligible for reimbursement.**
- 5. A maximum of 20% of the core services grant funding may be used for administrative or operational purposes. No more than 5% of administrative/operations funding may be used for operations expenses. Any administrative functions provided at the local level shall be budgeted at the local level.**
- 6. Reimburse KY Skills U within 60 days of notification for any unresolved costs and/or payments that are disallowed as of a result of KY Skills U policy, federal/state guidelines,**

	<i>Document Description</i>	<i>Page 8</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

**and/or audit findings.**

**7. Payments shall not be authorized for services rendered after Government Contract Review Committee disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the secretary.**

**8. Failure by the Second Party to adhere to KY Skills U or other reporting requirements may result in:**

- **Reimbursements being delayed or withheld; or**
- **The 30-day contract termination clause being invoked by KY Skills U.**

#### **F. FINANCIAL MANAGEMENT SYSTEM**

**The Second Party shall establish and/or maintain a financial system that shall provide for:**

**1. Accurate, current, and complete disclosure of the financial results of the functions/services performed under this contract in accordance with reporting requirements set forth in Federal**

**Uniform Guidance documents, (2 CFR 200);**

**2. Records that identify the source and application of funds for activities/functions/services performed under this contract. These records shall contain information pertaining to federal and/or state funds received, obligations, unobligated balances (if applicable), assets, liabilities, expenditures, income, and hours worked by each individual supporting this grant reported by county, role and personnel function;**

**3. Effective control over and accountability for all funds, property, and other assets. The Second Party shall safeguard all such assets and shall assure that they are used solely for authorized purposes in the provision of functions/services under this contract;**



	<i>Document Description</i>	<i>Page 9</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

**4. Submit a cumulative inventory report form on-line using the KY Skills U KAERS Finance Module on or before August 31, 2021 for all non-consumable property with a life expectancy of one year or more and acquired with KY Skills U funds. Cumulative inventory is defined as any inventory purchase made with KY Skills U funds under this agreement or any previous agreement with KY Skills U (previously known as DAEL). All property purchased with Adult Education funds will revert to KY Skills U in the event this contract is not executed or is terminated; Note: Federal regulations restrict purchase of any item valued at \$5,000 or greater without prior written approval.**

**5. When computer equipment has reached the end of its useful life, it may be disposed of following the Commonwealth Office of Technology (COT) guidelines for safeguarding personal and student information. It is the responsibility of the Second Party to properly dispose of equipment in accordance with COT policy. The sanitizing process shall be documented with the COT-F108, Commonwealth of Kentucky Record of IT Equipment Sanitization Form. A completed record must be maintained in a central location designated by the agency. This information must be maintained as outlined by the Kentucky Department of Library and Archives (KDLA) record retention schedule.**

**6. Accounting records that are supported by original source documentation—including personnel time records;**

**7. Assurance that no other funds or assets of the Second Party shall be co-mingled with the funds provided for these programs to be administered under this contract to any other program account, and that these funds shall not be utilized for any purposes except those specifically identified herein; and**

	<i>Document Description</i>	<i>Page 10</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

**8. Responsibility for monitoring, fiscal and/or program exceptions established by evaluation, monitoring and/or audit of this contract, and for promptly settling any monitoring, fiscal and program audit exceptions by making direct payment, or reduction of future reimbursement, or by other methods approved by KY Skills U.**

#### **G. Marketing, Outreach & Media Releases**

**Assure that all signage, printed or electronic materials or presentations used for the promotion of programs paid wholly or in part with state or federal adult education funds identify that the program is a federal and state program administered by KY Skills U. All materials produced should be tagged with “A Proud Partner of the American Job Center Network”.**

#### **H. COPYRIGHTING**

**KY Skills U has a royalty free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, or permit others to use, any copyrighted material developed in the course of or under this contract.**

#### **I. EXTENSION/AMENDMENTS**

**1. The terms and conditions of this contract may be extended or amended by mutual consent of the parties in writing.**

**2. The Second Party may reallocate funds up to but not exceeding 10% of the original line item budget. No funds may be moved between sub-grants. The total amount of the grant is not**

**subject to alteration by the Second Party. Written notification of reallocation shall be made in the KY Skills U KAERS Finance Module prior to invoicing with the reallocated budget. Notification of reallocation must be received by KY Skills U no later than March 31, 2021.**

**3. In exceptional circumstances and for good cause shown,**

	<i>Document Description</i>	<i>Page 11</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

**the Second Party may request to amend the contract budget beyond 10% of any original line item. A request for such amendment shall be received by KY Skills U in the KY Skills U Finance Module no later than March 31, 2021, and will be considered on a case-by-case basis. Approval from KY Skills U must be secured prior to expending funds based upon any reallocation in excess of 10% of the original line item.**

#### **J. TERMINATION**

**KY Skills U may cancel the contract at any time for failure of the second party to perform its contractual duties including failure to comply with assurances and Implementation Guidelines (IG), or on 30 day written notice without cause.**

#### **ASSURANCES AND CERTIFICATIONS**

**Following is a series of state and federal laws and regulations with which a recipient of federal or state funding must be in compliance in order to receive the funds. If the Second Party cannot comply with any of these laws and regulations, federal or state funds cannot be released to that applicant.**

#### **K. KRS 45A.485 CERTAIN CONTRACTS REQUIRED TO MANDATE REVEALING OF VIOLATIONS OF AND COMPLIANCE WITH SPECIFIED KRS CHAPTERS – EFFECT OF NONDISCLOSURE OR NONCOMPLIANCE.**

**The Second Party shall comply with KRS 45A.485 to (a) reveal to the Commonwealth, prior to the award of this contract, any final determination of a violation by the applicant within the previous five-year period of the provisions of KRS Chapters 136 – Corporation and Utility Tax, 139 – Sales and Use Tax, 141 – Income Taxes, 337 – Wage and Hours, 338 – Occupational Safety and Health of Employees, 341 – Unemployment Compensation, and 342 – Workers Compensation and (b) for the duration of the grant to be in**

	<i>Document Description</i>	<i>Page 12</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

**continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342. To comply with provisions of KRS 45A.485, the contractor shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information concerning the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination. Failure to comply with the above-cited statutes for the duration of the contract shall be grounds for the Commonwealth's cancellation of the contract and the contractor's disqualification from eligibility to bid or submit proposals to the Commonwealth for a period of two years.**

#### **L. DISCRIMINATION PROHIBITED**

- 1.The Second Party agrees not to discriminate on the basis of race, color, national origin, religion, sex, age, or disability in employment or service delivery and program participation in conformity with the provisions of Title VI and VII of the Civil Rights Act of 1964, as amended; Title IX of the Education Amendments of 1972, as amended; Rehabilitation Act of 1973, as amended; Age Discrimination Act of 1975, as amended; Americans with Disabilities Act of 1990; and Executive Order No. 11246 of September 24, 1965, as amended; and all other applicable laws which prohibit discrimination and implementing regulations, guidelines, and standards lawfully adopted and promulgated under the laws.**
- 2.In compliance with KRS 344.015, Kentucky Adult Education Skills U, an agency of Education and Workforce Development Cabinet has adopted a Title VI Plan. The Second Party shall likewise adopt the Title VI Plan or certify compliance with its own Title VI Plan. The CPE Title VI Plan is available at [www.cpe.ky.gov](http://www.cpe.ky.gov)**
- 3.To the extent that the Second Party is a required partner in a Kentucky Career Center established pursuant to Title I of the Workforce Innovation Opportunity Act of 2014 (P.L.**

	<i>Document Description</i>	<i>Page 13</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

**113-128), the Second Party assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:**

- **Section 188 of the Workforce Innovation Opportunity Act of 2014 (WIOA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIOA Title I-financially assisted program or activity;**
- **Title VI of the Civil Rights act of 1964, as amended, which prohibits discrimination on the basis of race, color and national origin;**
- **Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;**
- **The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and**
- **Title IX of the Education amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.**

**The Second Party also assures that it will comply with all regulations implementing the laws listed above. This assurance applies to the Second Party's status, if applicable, as a required partner in a one-stop delivery system established under WIOA. The Second Party understands that the United States has the right to seek judicial enforcement of this assurance.**

#### **M. CERTIFICATION OF A DRUG-FREE WORKPLACE**

**The Second Party shall comply with the provisions of 34 CFR Part 85, Subpart F, Drug Free Workplace Act of 1988.**

	<i>Document Description</i>	<i>Page 14</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

**N. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION, LOWER TIER COVERED TRANSACTIONS**

**1. The Second Party certifies that neither the Second Party nor its principals:**

- (a) Are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Adult Education or agency;**
- (b) Have within a three-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with performing a public transaction;**
- (c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses defined at 34 CFR Part 85;**
- (d) Have within a three-year period preceding this contract had one or more public transaction terminated for cause or default;**
- 2. Where the Second Party is unable to certify to any of the statements in this certification, they shall submit an explanation to KY Skills U; and**
- 3. The instructions for certification, which are an integral part of this certification, have been read and agreed to by the Second Party.**

**O. CERTIFICATION ON LOBBYING**

**No federally appropriated funds have been paid or will be paid, by or on behalf of the Second Party, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member or of Congress in connection with the making of any federal grant, the entering**

	<i>Document Description</i>	<i>Page 15</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

**into any cooperative contract, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative contract. If any funds, other than federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or an employee of Congress, or an employee of a member of Congress in connection with this Federal grant or cooperative contract, the Second Party shall complete and submit standard form-LLL "Disclosure Form to Report Lobbying" in accordance with its instructions. The Second Party shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including contracts, and contracts under grants and cooperative contracts) and that all sub- recipients shall certify and disclose accordingly.**

#### **P. SAFETY**

**The Second Party assures that program participants shall not be required or permitted to receive KY Skills U funded services in buildings or surroundings which are dangerous, unsanitary, or hazardous to either the participant's or employee's health and safety.**

#### **Q. REMEDIES FOR BREACH**

**In the event of breach of contract by the Second Party, KY Skills U may pursue any remedy available to it pursuant to this contract, or to the provisions of KRS Chapter 45A, or any other remedy available to it at law.**

**In relation to the contract, KY Skills U agrees to:**

**Monitor and evaluate the program for compliance with the provisions of this contract;**

**provide information, consultation, technical assistance, and forms;**

	<i>Document Description</i>	<i>Page 16</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

**Provide the Second Party access to the KAERS for the limited purpose of data entry, assessment of potential services, program eligibility and fiscal recordkeeping; and**  
**Provide timely payments to the contractor upon receipt of approved invoices.**

#### SCOPE OF WORK FY 2020 – 2021

##### AUTHORITY

**KY Skills U administers federal and state funds for the provision of AE services which to assist adults to become literate and obtain the knowledge and skills necessary for employment, self-sufficiency and completion of a secondary education in compliance with the Workforce Innovation Opportunity Act, Title II Adult Education and Literacy, 20 U. S. C. § 9201 et seq., KRS151B.410, KRS164.041, the KY Skills U State Plan, Implementation Guidelines, and implementing regulations.**

##### **Family Literacy Component (as applicable)**

**KY Skills U administers state funds for adult education services to provide family literacy services that are of sufficient intensity in terms of hours, and of sufficient duration, to assist families to make sustainable increases in their literacy level and to become self-sufficient, pursuant to KRS 151B.410 and KRS 158.360.**

##### PROGRAM DESIGN AND ACTIVITIES

**The Second Party agrees to the following:**

- 1. Provide adult education services or instruction below the postsecondary level for any eligible individual who:**
  - has attained 16 years of age;**
  - who is not enrolled or required to be enrolled in secondary school under State law and**



	<i>Document Description</i>	<i>Page 17</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

**who-**

**is basic skills deficient;**

**ii. does not have a secondary school diploma or its recognized equivalent, and has not achieved an equivalent level of education; or**

**is an English language learner.**

**2. Assess students to determine their academic level utilizing an enrollment assessment instrument recognized by KY Skills U. Administer standardized tests consistent with KY Skills U assessment policy.**

**3. Entities receiving funding as described in the IG's performance Funding Model, shall expend those performance funds in accordance with KY Skills U fiscal policies and procedures.**

**4. Acceptable expenditures may include, but are not limited to, KY Skills U approved or sponsored training, instructional materials and equipment, advertising or facility improvements that do not include structural changes as defined in applicable federal circulars.**

**5. Additional compensation above an employee's customary wages or a bonuses for employees is not an allowable expense.**

**6. Submit any changes to the proposed delivery of services consistent with applicable statutes, regulations, and policies, including budget, scope of work, or personnel qualifications worksheets to KY Skills U for review and approval.**

**7. Adhere to all requirements outlined in the KY Skills U Implementation Guidelines.**

**8. Adhere to any statutes and regulations applicable as a result of receiving federal grant funding.**

#### **REPORTING**

**The Second Party agrees to:**

	<i>Document Description</i>	<i>Page 18</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

- 1.Submit the KY Skills U Expenditure Report monthly in compliance with the Method of Payment as outlined in this contract, II. F. 1-8;**
- 2.Submit to KY Skills U by August 31, 2021, a cumulative Inventory Report on-line for all non- consumable items purchased with KY Skills U funds (II. G. 4);**
- 3.Submit a copy of the single audit as per section II. E of this document by March 31, 2021; and that**
- 4.Failure by the Second Party to adhere to KY Skills U reporting requirements may result in:**
  - **Reimbursements being delayed, reduced or withheld; or**
  - **KY Skills U invoking the 30-day contract termination clause.**

#### **PROFESSIONAL DEVELOPMENT**

**The Second Party agrees to:**

- 1. Adhere to KY Skills U Professional Development and Training Policy as detailed in the KY Skills U Implementation Guidelines, which may be amended from time to time; and**
- 2.Ensure that expenditure for professional development activities follows the Fiscal Guidelines for Professional Development in accordance with KY Skills U Implementation Guidelines and the Professional Learning Handbook for KY Skills U approved professional activities.**

#### **DORRECTIONS**

**The Second Party agrees to provide, where applicable, adult education and literacy services to eligible incarcerated participants on a cost reimbursable basis, and in compliance with KY Skills U policies and contract payment and reporting requirements as specified in this document. In the event the Second Party elects not to offer services in a correctional facility, KY Skills U reserves the right to secure services from another entity.**

	<i>Document Description</i>	<i>Page 19</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

#### PROGRAM ASSURANCES FY 2020-2021

**Assurances to Kentucky Adult Education Skills U, Education and Workforce Development Cabinet (KYAE Skills U), under authority of Title II of the Workforce Innovation Opportunity Act of 2014, P.L. 113-128,**

**KRS 151B.410, KRS 158.360 and KRS 164.020-234. The Second Party assures Kentucky Adult Education, Education and Workforce Development Cabinet that:**

- 1.) The information contained in the application/proposal is correct and accurate to the best knowledge of the second party.**
- 2.) The second party will comply with all provisions of the KY Skills U Implementation Guidelines. (This is a State Requirement. The Federal Workforce Innovation Opportunity Act, Adult Education and Family Literacy Act, Title II, requires that RFPs identify state requirements.)**
- 3.) The second party will meet enrollment, academic performance, GED and transition goals. (This is a State Requirement.)**
- 4.) The second party or an approved consortium partner will provide direct services to eligible adults and will not subcontract service provision. (This is a State Requirement.)**
- 5.) The second party will provide structured, scheduled, instructor-led learning opportunities resulting in successful student and program outcomes as well as effectiveness and efficiency. The second party will incorporate KY Skills U's managed program design parameters. (This is a State Requirement.)**
- 6.) The second party will incorporate KY Skills U College & Career Readiness Standards into classroom use. (This is a State Requirement.)**
- 7.) A major indicator of program success is a high-quality instructional staff and instructional leadership. The second**

	<i>Document Description</i>	<i>Page 20</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

**party assures that all staff will meet KY Skills U minimum personnel requirements as specified in the KY Skills U Implementation Guidelines and that new staff will be hired through a structured, rigorous recruitment and selection process. (This is a State Requirement.)**

**8.) Grantees located in counties with full-service jails will work in cooperation with the local jailer to offer adult education services in correctional settings. (This is a State Requirement.)**

**9.) The second party will adhere to all KY Skills U data collection and reporting requirements. (This is a State Requirement.)**

**10.) The second party is responsible for providing technical support to the adult education program as needed to ensure security of information, computer access for staff and students, and proper functionality of hardware and software. (This is a State Requirement.)**

**11.) Funds received under this grant will be used to supplement and not supplant funds already available to the applicant from other sources for purposes authorized by the Adult Education and Family Literacy grant program.**

**12.) KY Skills U funds shall not be expended for any purposes other than the direct provision of the adult education services.**

**13.) The second party will have sufficient working capital to sustain AE services until the first invoice is paid according to the Commonwealth of Kentucky's contracting and invoicing process. In accordance with the Federal Cash Management Improvement Act, eligible providers that lack sufficient working capital may submit a written request for a working capital advance.**

**14.) The second party will repay any funds that have been finally determined through federal or state audit resolution processes to have been questioned or disallowed costs or otherwise not properly accounted for, and further agrees to pay any collection fees that may subsequently be imposed**

	<i>Document Description</i>	<i>Page 21</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

**by the federal and/or state government. (This is a State Requirement.)**

**15.) A maximum of 20 percent (5 percent federal, 15 percent state) of the core services grant funding may be used for administrative purposes. Fiscal agents serving multiple counties should be aware that (These are State Requirements.):**

- **Administrative funds can be pooled from multiple counties to support a full-time adult education director.**
- **Instructional funds may not be used to cover administrative costs. Instructional funds used to cover any non-instructional staff time/activity will be considered cause for contract termination.**

**16.) No more than 15% of a program's core services budget shall be spent on instructional materials, equipment and or supplies in the last quarter of the program year. Eighty-five percent (85%) of instructional materials and supplies shall be expended by March 31. Any amendments shall be initiated by March 31st, 2021. (This is a state requirement)**

**17.) To maximize the amount of funds available for direct instructional services, KY Skills U expects adult education programs to pay minimal or no rent for space; those located in publically-owned buildings, particularly, should expect no or minimal rent for space. Operational costs shall not exceed 5 percent of the county's total core services allocation.**

**1. Fiscal agents shall ensure that (These are State Requirements.):**

- **All instructional facilities and services are in compliance with the Americans with Disabilities Act of 1990.**
- **Facilities have appropriate exterior and interior signage clearly identifying KYSU. The learning environment is in good condition and properly maintained with adequate space and equipment.**

	<i>Document Description</i>	<i>Page 22</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

- **There is a separate room available for student assessment and counseling purposes.**
- **The building and surroundings are safe, sanitary, age appropriate and non-hazardous.**
- **The location is easily accessible with adequate parking.**
- **The facility has an environment conducive to adult learning including access to internet.**

**2.State and Federal funds are to be used for AE services. Fiscal agents are expected to seek donated or in-kind space in order to provide maximum resources to the students.**

**Postsecondary education institutions receiving grants shall provide adult education services on their postsecondary campus as the primary site for services.**

**3.If it is determined through a KY Skills U site visit that the facility does not meet requirements, the second party may be asked to relocate the center to a more appropriate location or correct deficiencies. (This is a State Requirement.)**

**Workforce Innovation and Opportunity Act Considerations:**

**In awarding grants or contracts under this section, the eligible agency shall consider;**

- 1. The degree to which the eligible provider would be responsive to-**
  - a. Regional needs as identified in the local plan under section 108; and**
  - b. Serving individuals in the community who were identified in such plan as most in need of adult education and literacy activities including individuals-**

**Who have low levels of literacy skills; or**

**Who are English language learners;**

	<i>Document Description</i>	<i>Page 23</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

2. **The ability of the eligible provider to serve eligible individuals with disabilities, including eligible individuals with learning disabilities;**
3. **Past effectiveness of the eligible provider in improving the literacy of eligible individuals, to meet State-adjusted levels of performance for the primary indicators of performance described in section 116, especially with respect to eligible individuals who have low levels of literacy;**
4. **The extent to which the eligible provider demonstrates alignment between proposed activities and services and the strategy and goals of the local plan under section 108, as well as the activities and services of the one-stop partners;**
5. **Whether the eligible provider's program-**
  - a. **Is of sufficient intensity and quality, and based on the most rigorous research available so that participants achieve substantial learning gains; and**
  - b. **Uses instructional practices that include the essential components of reading instruction;**
6. **Whether the eligible provider's activities, including whether reading, writing, speaking, mathematics, and English language acquisition instruction delivered by the eligible provider, are based on the best practices derived from the most rigorous research available and appropriate, including scientifically valid research and effective educational practice;**
7. **Whether the eligible provider's activities effectively use technology, services, and delivery systems, including distance education in a manner sufficient to increase the amount and quality of learning and how such technology, services, and systems lead to improved performance;**

	<i>Document Description</i>	<i>Page 24</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

- 8. Whether the eligible provider's activities provide learning in context, including through integrated education and training, so that an individual acquires the skills needed to transition to and complete postsecondary education and training programs, obtain and advance in employment leading to economic self-sufficiency, and to exercise the rights and responsibilities of citizenship;**
- 9. Whether the eligible provider's activities are delivered by well-trained instructors, counselors, and administrators who meet any minimum qualifications established by the State, where applicable, and who have access to high quality professional development, including through electronic means.**
- 10. Whether the eligible provider's activities coordinate with other available education, training, and social service resources in the community, such as by establishing strong links with elementary schools and secondary schools, postsecondary educational institutions, institutions of higher education, local workforce investment boards, one-stop centers, job training programs, and social service agencies, business, industry, labor organizations, community-based organizations, nonprofit organizations, and intermediaries, for the development of career pathways;**
- 11. Whether the eligible provider's activities offer flexible schedules and coordination with Federal, State, and local support services (such as child care, transportation, mental health services, and career planning) that are necessary to enable individuals, including individuals with disabilities or other special needs, to attend and complete programs;**
- 12. Whether the eligible provider maintains a high-quality information management system that has the capacity to report measurable participant outcomes (consistent with section 116) and to monitor program performance; and**
- 13. Whether the local areas in which the eligible provider is**



	<i>Document Description</i>	<i>Page 25</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

**located have a demonstrated need for additional English language acquisition programs and civics education programs.**

#### **Access to Records**

**The state agency certifies that it is in compliance with the provisions of KRS 45A.695, "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The Contractor, as defined in KRS 45A.030, agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this agreement for the purpose of financial audit or program review. The Contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the agreement and shall be exempt from disclosure as provided in KRS 61.878(1)(c).**

**The Second Party agrees to maintain all records pertaining to this agreement for a period of not less than three (3) years after the contract closing date and that all matters pertaining to this contract (i.e., audit, settlement of audit exceptions, disputes) are resolved in accordance with applicable federal and/or state laws, regulations, and policies (except as may otherwise be specified in this contract). This includes files of all personnel, financial records, statistics, property, participants, and supporting documentation or other written materials that relate to the delivery of service.**

**The Second Party agrees to permit staff of KY Skills U, or persons acting for KY Skills U, and/ or staff designated by**

	<i>Document Description</i>	<i>Page 26</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

**appropriate federal agencies, to monitor and evaluate services being performed and review all documents or records related to the provision of most services. The Second Party also agrees to submit all records and documentation of service provisions in regard to contracted services when requested for monitoring purposes.**

**The Second Party agrees to maintain records that are sufficient to identify the results of the service provided to each individual and for use in evaluating the effectiveness of the total program. These records will be made available to KY Skills U staff upon request.**

**Effective Date: July 1, 2020 - Expiration Date: June 30, 2021**

	<i>Document Description</i>	<i>Page 27</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

**MOA/PSC Exception Standard Terms and Conditions  
Revised December 2019**

**Whereas**, the first party, the state agency, has concluded that either state personnel are not available to perform said function, or it would not be feasible to utilize state personnel to perform said function; and  
**Whereas**, the second party, the Contractor, is available and qualified to perform such function; and  
**Whereas**, for the abovementioned reasons, the state agency desires to avail itself of the services of the second party;

**NOW THEREFORE**, the following terms and conditions are applicable to this contract:

**1.00 Effective Date:**

This contract is not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been submitted to the Legislative Research Commission, Government Contract Review Committee ("LRC"). However, in accordance with KRS 45A.700, contracts in aggregate amounts of \$10,000 or less are exempt from review by the committee and need only be filed with the committee within 30 days of their effective date for informational purposes.

KRS 45A.695(7) provides that payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the Secretary.

**2.00 LRC Policies:**

**This section does not apply to governmental or quasi-governmental entities.**

Pursuant to KRS 45A.725, LRC has established policies which govern rates payable for certain professional services. These are located on the LRC webpage (<http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>) and would impact any contract established under KRS 45A.690 et seq., where applicable.

**3.00 Choice of Law and Forum:**

**This section does not apply to governmental or quasi-governmental entities.**

This contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. Any action brought against the Commonwealth on the contract, including but not limited to actions either for breach of contract or for enforcement of the contract, shall be brought in Franklin Circuit Court, Franklin County, Kentucky in accordance with KRS 45A.245.

**4.00 EEO Requirements**

The Equal Employment Opportunity Act of 1978 applies to All State government projects with an estimated value exceeding \$500,000. The contractor shall comply with all terms and conditions of the Act.

**5.00 Cancellation:**

Both parties shall have the right to terminate and cancel this contract at any time not to exceed thirty (30) days' written notice served on the Contractor by registered or certified mail.

**6.00 Funding Out Provision:**

The state agency may terminate this contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The state agency shall provide the Contractor thirty (30) calendar days' written notice of termination of the contract due to lack of available funding.

**7.00 Reduction in Contract Worker Hours:**

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such

	<i>Document Description</i>	<i>Page 28</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

authority the agency is required by Executive Order or otherwise to reduce contract hours, the agreement will be reduced by the amount specified in that document. If the contract funding is reduced, then the scope of work related to the contract may also be reduced commensurate with the reduction in funding. This reduction of the scope shall be agreeable to both parties and shall not be considered a breach of contract.

#### **8.00 Authorized to do Business in Kentucky:**

**This section does not apply to governmental or quasi-governmental entities.**

The Contractor affirms that it is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state and will remain in good standing to do business in the Commonwealth of Kentucky for the duration of any contract awarded.

The Contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof.

#### **Registration with the Secretary of State by a Foreign Entity:**

Pursuant to KRS 45A.480(1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by KRS 14A.9-010 to obtain a certificate of authority to transact business in the Commonwealth ("certificate") from the Secretary of State under KRS 14A.9-030 unless the person produces the certificate within fourteen (14) days of the bid or proposal opening. Therefore, foreign entities should submit a copy of their certificate with their solicitation response. If the foreign entity is not required to obtain a certificate as provided in KRS 14A.9-010, the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within KRS 14A.1-070.

**For all foreign entities required to obtain a certificate of authority to transact business in the Commonwealth, if a copy of the certificate is not received by the contracting agency within the time frame identified above, the foreign entity's solicitation response shall be deemed non-responsive or the awarded contract shall be cancelled.**

Businesses can register with the Secretary of State at <https://onestop.ky.gov/Pages/default.aspx>

#### **9.00 Invoices for fees:**

**This section does not apply to governmental or quasi-governmental entities.**

The Contractor shall maintain supporting documents to substantiate invoices and shall furnish same if required by state government.

#### **10.00 Travel expenses, if authorized:**

**This section does not apply to governmental or quasi-governmental entities.**

The Contractor shall be paid for no travel expenses unless and except as specifically authorized by the specifications of this contract or authorized in advance and in writing by the Commonwealth. The Contractor shall maintain supporting documents that substantiate every claim for expenses and shall furnish same if requested by the Commonwealth.

#### **11.00 Other expenses, if authorized herein:**

**This section does not apply to governmental or quasi-governmental entities.**

The Contractor shall be reimbursed for no other expenses of any kind, unless and except as specifically authorized within the specifications of this contract or authorized in advance and in writing by the Commonwealth.

If the reimbursement of such expenses is authorized, the reimbursement shall be only on an out-of-pocket basis. Request for payment of same shall be processed upon receipt from the Contractor of valid, itemized statements submitted periodically for payment at the time any fees are due. The Contractor shall maintain supporting documents that substantiate every claim for expenses and shall furnish same if requested by the Commonwealth.

#### **12.00 Purchasing and specifications:**

**This section does not apply to governmental or quasi-governmental entities.**

	<i>Document Description</i>	<i>Page 29</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

The Contractor certifies that he/she will not attempt in any manner to influence any specifications to be restrictive in any way or respect nor will he/she attempt in any way to influence any purchasing of services, commodities or equipment by the Commonwealth of Kentucky. For the purpose of this paragraph and the following paragraph that pertains to conflict-of interest laws and principles, "he/she" is construed to mean "they" if more than one person is involved and if a firm, partnership, corporation, or other organization is involved, then "he/she" is construed to mean any person with an interest therein.

**13.00 Conflict-of-interest laws and principles:**

**This section does not apply to governmental or quasi-governmental entities.**

The Contractor certifies that he/she is legally entitled to enter into this contract with the Commonwealth of Kentucky, and by holding and performing this contract, he/she will not be violating either any conflict of interest statute (KRS 45A.330-45A.340, 45A.990, 164.390), or KRS 11A.040 of the executive branch code of ethics, relating to the employment of former public servants.

**14.00 Campaign finance:**

**This section does not apply to governmental or quasi-governmental entities.**

The Contractor certifies that neither he/she nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of this contract, has contributed more than the amount specified in KRS 121.056(2), to the campaign of the gubernatorial candidate elected at the election last preceding the date of this contract. The Contractor further swears under the penalty of perjury, as provided by KRS 523.020, that neither he/she nor the company which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to him/her or the company which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

**15.00 Access to Records:**

The state agency certifies that it is in compliance with the provisions of KRS 45A.695, "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The Contractor, as defined in KRS 45A.030, agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this agreement for the purpose of financial audit or program review. The Contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the agreement and shall be exempt from disclosure as provided in KRS 61.878(1)(c).

**16.00 Social security: (check one)**

**This section does not apply to governmental or quasi-governmental entities.**

\_\_\_\_\_ The parties are cognizant that the state is not liable for social security contributions, pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

\_\_\_\_\_ The parties are cognizant that the state is liable for social security contributions, pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

**17.00 Violation of tax and employment laws:**

KRS 45A.485 requires the Contractor and all subcontractors performing work under the contract to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the Contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to corporate and utility tax, sales and use tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively

	<i>Document Description</i>	<i>Page 30</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

To comply with the provisions of KRS 45A.485, the Contractor and all subcontractors performing work under the contract shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the Contractor and all subcontractors performing work under the contract shall be in continuous compliance with the provisions of those statutes, which apply to their operations, and that their failure to reveal a final determination, as described above, or failure to comply with the above statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract and their disqualification from eligibility for future state contracts for a period of two (2) years.

Contractor must check one:

       The Contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

       The Contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). Attached is a list of such determination(s), which includes the KRS violated, the date of the final determination, and the state agency which issued the final determination.

#### **18.00 Discrimination:**

This section applies only to contracts disbursing federal funds, in whole or part, when the terms for receiving those funds mandate its inclusion. Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. During the performance of this contract, the Contractor agrees as follows:

The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity or age. The Contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The Contractor agrees to provide, upon request, needed reasonable accommodations. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

In all solicitations or advertisements for employees placed by or on behalf of the Contractor, the Contractor will state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.

The Contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding a notice advising the said labor union or workers' representative of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant

	<i>Document Description</i>	<i>Page 31</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

thereto, and will permit access to his/her books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions that may be imposed and remedies invoked as provided in or as otherwise provided by law.

The Contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

	<i>Document Description</i>	<i>Page 32</i>
2000001498	Jefferson County Public Schools KYAE-2021-012	

## Approvals

This contract is subject to the terms and conditions stated herein. By affixing signatures below, the parties verify that they are authorized to enter into this contract and that they accept and consent to be bound by the terms and conditions stated herein. In addition, the parties agree that (i) electronic approvals may serve as electronic signatures, and (ii) this contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single contract.

1st Party (Secretary):

\_\_\_\_\_  
Signature Title

\_\_\_\_\_  
Printed Name Date

1st Party (Executive Director):

\_\_\_\_\_  
Signature Title

\_\_\_\_\_  
Printed Name Date

2nd Party:

\_\_\_\_\_  
Signature Title

\_\_\_\_\_  
Printed Name Date

Other Party

\_\_\_\_\_  
Signature Title

\_\_\_\_\_  
Printed Name Date

Approved as to form and legality:

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Attorney