

# Memorandum of Agreement Terms between Education and Workforce Development Cabinet Office of Vocational Rehabilitation and the Local Education Authority (LEA)

This Memorandum of Agreement (MOA) is entered into, by and between the Commonwealth of Kentucky, Office of Vocational Rehabilitation (“OVR” or “the Commonwealth”) and [ Boone County School District ] to establish an agreement for the Community Work Transition Program (CWTP).

The initial MOA is effective from July 20, 2021 through June 30, 2022.

## I. COVID-19 Terms

Our primary concern is the health and safety of our consumers, staff, and partners. During the term of this Agreement, Executive Orders or other safety protocol as mandated by OVR, may limit or prohibit in-person services. The vendor must comply with the following procedures when in person services are prohibited:

- I. Substantive services must continue to be provided to consumers. Substantive services may include but are not limited to resources for distance service delivery listed at: <http://www.wintac.org/content/resources-distance-service-delivery#tech> [Distance Service Delivery](#)
- II. In order for services to be reimbursed, substantive services must be rendered.
- III. Service providers may implement accessible training activities using a computer-based training platform that allows for face-to-face interaction. As part of this process, the service provider must ensure the consumer’s ability to actively participate in computer-based training, including identifying whether the customer has the computer resources available.
- IV. Prior to providing services on a remote basis to OVR consumers, a plan of service must be submitted to the OVR Administrator detailing the proposed methods of providing remote services.
- V. The provider must have written OVR approval of the proposed plan of service prior to implementation of remote services.

## II. Definitions

“OVR eligible students” are students who have applied for Vocational Rehabilitation (VR) services and met the criteria for eligibility.

“OVR potentially eligible students” are secondary school students who may be eligible for VR services.

“Competitive Integrated Employment” has the same meaning as defined in the Rehabilitation Act as amended by the Workforce Innovation and Opportunity Act (29 U.S.C. 705).

“Community Work Transition Program” (CWTP) means the vocational rehabilitation program designed to assist OVR “eligible” and “potentially eligible” students who have identified work as a possible desired post-school outcome and have demonstrated a need for assistance to transition from high school to post-school activities, including employment. Students who may be considering work-sheltered facilities earning a sub-minimum wage post high school may also participate in CWTP for experiential work opportunities. The goal of this program and all services provided is community work exploration and competitive, integrated employment.

CWTP utilizes the unique services of a qualified employment specialist (ES) to provide:

1. Pre-ETS for students in their 9<sup>th</sup> and 10<sup>th</sup> grade year, in individual and/or group services (i.e. job exploration and counseling, work-based learning experiences, post-secondary counseling, workplace readiness training in the areas of social skills and independent living, and self-advocacy instruction) and,
2. Transition services, individually only (i.e. transition planning, career assessment, job development, job coaching, community job placement, and post-school follow-up services).

“Pre-Employment Transition Services” (Pre-ETS) means services available to students who are “eligible” or “potentially eligible” during their 9<sup>th</sup> and 10<sup>th</sup> grade year, unless an exception is approved in advance by OVR. Pre-ETS services may be only authorized for up to 15 hours each quarter, and billing must be submitted in 15-minute increments (i.e. .25, .50, .75, 1.00). For an additional breakdown on rates per student, please see Addendum A. Each of these services is authorized on a quarterly basis, up to four (4) quarters per year. The activities will be documented on monthly reports and will be provided, as described in the MANUAL, to OVR by the fifth (5<sup>th</sup>) of each month following the month in which the activity was completed. Services will focus on:

1. Exposure to local labor market opportunities
2. A variety of community settings; and,
3. Allow the student to explore and experience possible careers of interests.

“Pre-ETS activities” means:

1. Job Exploration Counseling

- a. I.e. interest inventories, career pathways, exploring in-demand occupations, and interview skills.
- 2. Work-Based Learning Experiences
  - a. I.e. job shadowing, touring companies, job training, internships, apprenticeships, short-term employment, on-the-job training, and learning about jobs.
- 3. Post-Secondary Counseling
  - a. I.e. providing information on course offerings, career options, types of trainings available, advising on academic curricula, application, and admission process, completing the FAFSA and disability support services.
- 4. Workplace Readiness Training
  - a. I.e. soft skills training, communication and interpersonal skills, financial literacy, travel training, job seeking skills, and employer expectations.
- 5. Self-Advocacy Instruction
  - a. I.e. rights and responsibilities, request accommodations/services/supports, communicate needs, and informational interviews.

“Transition Services” means the promotion of successful movement into competitive integrated employment prior to exiting high school.

“Comprehensive Vocational Assessment” (CVA) means an assessment conducted by an ES in order to determine an eligible student’s unique strengths, resources, priorities, concerns and abilities. The CVA allows the VR counselor to utilize the information gathered to determine the student vocational goal in writing or amending the Individualized Plan for Employment (IPE).

“Job Development/Job Coaching Planning Meeting” means a meeting conducted by the last quarter of the student’s junior year during which the VR Counselor, the student, parent or guardian, CWTP Employment Specialist, and others (if applicable) plan unique, vocationally relevant activities for the student. The meeting participants discuss the student’s initial expressed interests and CVA to determine job development/job coaching activities that pertain to the IPE vocational goal; individualized supports, as needed; and the potential need for referral for supported employment, if included in the IPE.

Job Development/Job Coaching means individualized, weekly training provided by the ES for the express purpose of the student attaining employment prior to exiting high school. The specific job must be of interest to the student, in a competitive integrated work environment, and reflect their IPE vocational goal. These services are authorized on a quarterly basis, up to

four (4) quarters per year, and for up to 20 hours each quarter, with a maximum of 80 hours in a school year.

“Exit Planning Meeting (EPM)” means a meeting that allows for discussion on strategies and the expectations for the remainder of the CWTP, defining the steps the ES should take to ensure the student’s successful transition to post-school activities and future employment needs, An amended IPE may need to be written by the VR Counselor and appropriately signed by the student and/or parent/guardian, for the purpose of more clearly identifying services required to attain a successful transition that leads to competitive integrated employment.

“Job Placement Report” means the report written and submitted after the student is working in a position that meets the guidelines and vocational goal of the IPE, the natural supports of the position allow for the ES to phase out of the job site, and the position satisfies the student. The job placement must occur prior to the student exiting high school, with the student employed competitively in an integrated environment, stable and in good standing on the job site.

“Employment Follow-Up Report” means a report on the student’s post school employment status.

“Stable Employment” means a student within competitive integrated employment that:

1. Is satisfied with employment
2. Has an employer that is satisfied with student and no risk of termination or write-up
3. Has extended services in place, if applicable
4. Has worked consistent hours, as determined by hiring expectations and agreement
5. Works for a secure business

### III. Scope of Services

#### A. The LEA shall:

1. Provide Pre-ETS to students in their 9<sup>th</sup> and 10<sup>th</sup> grade years AND transition services to students in their 11<sup>th</sup> and 12<sup>th</sup> grade years. An LEA applying to be a CWTP in the 2021-2022 academic year **MUST** provide both Pre-ETS AND Transition services. Otherwise, the LEA will be considered in breach of the MOA.
2. In accordance with WIOA Sec. 113 (A), provide pre-ETS services only to students with disabilities who are determined “eligible” or “potentially eligible” for OVR pre-ETS as determined by the lead VR Counselor.
3. Provide each service with a VR focus.

4. Not supplant any school based instructional programs deemed the responsibility of the LEA through the Individuals with Disabilities Education Act (IDEA).
5. Complete and submit the appropriate CWTP application.
6. Hire an ES(s), who shall follow the requirements of the program and the spirit of its intent, with the following minimum requirements for employment:
  - a. High school education or equivalent.
  - b. Minimum two (2) years' experience working with individuals with disabilities.
  - c. Significant knowledge of jobs in the community.
  - d. Good written and oral communication skills.
  - e. Knowledge of the OVR resources in their area, the partners and the available programs for youth.
7. Assign one (1) special education teacher or liaison as the lead contact person (CWTP Primary Contact) in charge to directly assist OVR staff with implementation of the CWTP services.
8. Confirm the VR Counselor assigned to school and/or HDI staff member to be a part of interview team when ES positions need to be filled.
9. Ensure the ES and other school staff involved in the CWTP attend annual mandatory trainings provided by the University of Kentucky Human Development Institute (HDI). Staff are appropriately trained on the most current, approved methods of service delivery as described in the CWTP Policy Manual ("the Manual"). Billing will not be accepted from personnel not trained by HDI.
10. Ensure each CWTP contact and ES identified on the annual CWTP application shall be allowed release time to attend mandatory scheduled trainings.
11. Refer appropriate individuals who have demonstrated the need for individualized transition services in accordance to their IEP.
12. Complete a Comprehensive Vocational Assessment (CVA) for students OVR declares eligible for general VR services to determine the student's need for CWTP transition services. The CVA shall be used to determine an eligible student's unique strengths, resources, priorities, concerns and abilities, and shall be used to determine an appropriate vocational goal and future training needs. OVR will authorize and pay the LEA \$1,200.00 for the CVA.

13. Provide transition services to students in their final two (2) years of high school (11<sup>th</sup> and 12<sup>th</sup> grade) when it is determined the student has identified employment as a post-school outcome and who demonstrated a need for assistance to achieve their personal postsecondary employment goal. The transition services process, including referral to OVR, will typically begin eighteen months prior to school exit or graduation. The focus of transition services shall be on developing a plan to successfully exit high school and enter competitive, integrated employment. Transition services will target the student's strengths, preferences, interests and needs, taking into considering the job available in the local labor market. The following services are available to students who are "eligible" for VR services and shall be provided individually. Transition services shall be authorized on a quarterly basis. LEA shall document services on monthly reports and provide to OVR by the fifth (5th) of each month following the month in which the activity was completed.
14. Complete a job development/job coaching planning meeting to plan job development/job coaching activities for the student. OVR will pay the LEA \$300 upon receipt of report following this meeting.
15. Provide the job development/job coaching activities determined appropriate during the job development/job coaching planning meeting. OVR will pay the LEA \$40.00 per hour for Job Development/Job Coaching with a maximum of 20 hours, per quarter for authorized services.
16. Ensure the ES provides individualized, weekly training for the expressed purpose of the student attaining employment prior to exiting high school.
17. Conduct the exit planning meeting to define the steps to be taken to ensure the student's successful transition to post-school activities and future employment needs. The ES shall ensure this meeting takes place within the final quarter of the student's time in high school.
18. Submit a job placement report once the student is working in a position that meets the guidelines and vocational goal of the student's IPE. OVR will not issue payment for monthly progress notes after the job placement report is submitted.
19. Submit Employment Follow-Up Report as follows:
  - a. 30-day report if the student maintains successful employment for 30 days,
  - b. 60-day report if the student maintains successful employment for 60 days, and
  - c. 90-day report if the student maintains successful employment for 90 days.

LEA is eligible for payment when a student obtains a job placement that meets the students IEP and vocational goals, and the student has maintained stable employment and is in good standing with their employer for at least 30 days after exiting high school. Employment Follow-Up goals cannot be completed until 90 days of successful employment after training services are completed. Follow-Up employment service MUST be authorized before June 30.

The LEA is not eligible for follow-up payment if the student does not attain employment prior to exiting high school.

20. Ensure compliance with state regulations and federal requirements from the Department of Labor, regarding student wages.
21. Ensure the completion and submission of all required documentation to OVR and, as described in the Manual, verify the delivery of services. Required documentation shall include:
  - a. Participation Form for Pre-ETS and supporting documentation.
  - b. Pre- and Post-test documentation annually on students participating.
  - c. Monthly notes accurately accounting of services provided and maintaining supporting documents (i.e. CWTP tracking sheets).
  - d. Comprehensive Vocational Assessment, Job Development/Job Coaching Planning Meeting, Job Development/Job Coaching Monthly Reports, Exit Planning Meeting Report, Job Placement Report, and Employment Follow-up Reports, when provided.
22. Ensure services billed for are submitted on the appropriate billing form as described in the Manual, to the VR Counselor by the fifth (5<sup>th</sup>) of each month with supporting signatures and documentation attached.
23. Ensure the ES will work with each student referred and will ensure the mandatory components of the program are provided to remain a CWTP. The ES will maintain accurate records and provide the authorized services to the maximum extent possible for a successful program in providing a variety of opportunities to the students referred.
24. Actively partner with HDI to attend additional trainings/meetings at HDI: to develop and implement support plans, if the CWTP fails to achieve expectations; and construct timetables to address individual program needs should the quality of services require improvement.

25. Demonstrate progress towards meeting the goals of support plans within the designated timetables. Shall the support plans be unsuccessful, as defined by their individualized expectations, the LEA shall sit out of the program for no less than one (1) year.
26. Allow HDI access to provide individual program evaluations, program audits and technical support, as necessary.
27. Ensure the CWTP Annual Data Report regarding student, program outcomes and required statistical information is completed and submitted to HDI by end of school year.
28. Ensure the ES be allowed a private space for confidential discussions with the students, a locking file cabinet for maintaining confidential information, and computer access with internet to allow for work product such as forms, resumes, applications, labor market research, etc.
29. Make a request for a service exception to the VR Administrator prior to making a service exception for a student.

**B. OVR shall:**

1. Provide funding to the LEA, based on the rates set forth in this agreement, to provide CWTP and pre-ETS services to students.
2. Review student referrals and determine applicant's eligibility for Vocational Rehabilitation and pre-ETS services, prior to the start of service sessions.
3. Review referral and service session information to ensure accuracy, as well as eligibility status of students.
4. Review claim vouchers and supporting documentation prior to processing for payment to ensure completeness of data, ensuring invoices are accurate and reflect that services initially authorized for each student match service sessions listed.
5. Pre-authorize all services (quarterly) determined to be necessary through the OVR Case Management System (CMS) payment system, as the services are needed. Services shall not be provided until the LEA has received the authorization.
6. Have the final decision on whether a student may continue in CWTP and/or what services are appropriate.



7. Assure the student is in receipt of career counseling and information and referral services to Federal and State programs and other resources in the individual's geographic area that offer employment-related services and supports designed to enable the individual to explore, discover, experience and attain competitive integrated employment.
8. Ensure policies and procedures are maintained statewide. To make certain all parties involved with CWTP are trained appropriately and given support where needed, to review components during mandatory training on a yearly basis, provide guidance and assistance to LEA and OVR staff, and ensure expenditures are appropriate, solely for OVR consumers, deemed appropriate for the program.
9. Assign a minimum of one (1) VR Counselor to each LEA participating in the CWTP. The VR Counselor will provide guidance to the ES on developing an appropriate unique CWTP for each student participating in program. Counselor will authorize approved services and maintain all supporting documentation received and approved prior to payment of requested funds.

**NOTE:** In the event that the VR Counselor position assigned to the LEA be vacant, the VR local manager or a designee, in coordination with the VR Assistant assigned to the CWTP, will continue the program until such a time the VR Counselor position is filled.

10. Meet with "eligible" students, parents/guardians, the ES and/or involved staff on a regular basis, or as required, to effectively plan and implement a successful CWTP transition program.
11. Provide guidance and support to the ES in the provision of approved services, as well as provide feedback on labor market trends, necessary employment skill development and disability related intervention strategies for the unique needs of the individual consumer in order to develop a customized program.
12. Review and authorize all required services provided.
13. Ensure the VR counselor will use the CVA report to determine the student vocational goal in writing or amending the Individualized Plan for Employment (IPE).
14. Provide reimbursement in the amount of \$1,200.00 for a received and completed CVA.

- 15.Ensure the VR counselor attends the job development/job coaching planning meeting to plan unique, vocationally relevant activities for the student.
- 16.Authorize and pay the LEA \$300.00 for the Job Development/Job Coaching Planning meeting.
- 17.Provide reimbursement in the amount of \$300.00 for completed Job Development/Job Coaching planning meetings.
- 18.Ensure the VR counselor, if supported employment is needed, refers the student in the third quarter (Q3) of the senior year (12<sup>th</sup> grade) or year of exit.
- 19.Provide reimbursement in the amount of \$300.00 for a completed exit planning meeting. This meeting must include ES, VR Counselor and Student attendance and an outcome report.
- 20.Provide reimbursement in the amount of \$1,500.00 after a completed job placement report is received.
- 21.Provide reimbursement in the amount of \$200.00 after a completed 30-day employment follow up report is received.
- 22.Provide reimbursement in the amount of \$200.00 after a completed 60-day employment follow up report is received.
- 23.Provide reimbursement in the amount of \$200.00 after a completed 90-day employment follow up report is received.
- 24.Develop an IPE, when appropriate, noting the need for CWTP transition services.
25. Provide services, in accordance, with the IPE.
- 26.Ensure the VR counselor amends any IPE for the purpose of more clearly identifying services required to attain a successful transition and employment outcome that may come out of the student's exit planning meeting.
27. Review required documentation of approved services provided by the LEA and pay the LEA at the individual established rate for satisfactory services, as determined by the VR Counselor within 30 days of received correct documentation.

28. Monitor program expenditures by counselors for services approved under this MOA.
29. Ensure assigned VR Counselors will attend CWTP trainings provided by HDI.
30. Review need for assistive technology when student is in an employment setting, when applicable.
31. Provide benefits planning, when applicable.
32. Refer for adult services, such as independent living, when applicable.

## VI. Reporting/Invoicing

The LEA shall provide a monthly report due by the 5<sup>th</sup> of each month for the previous month (i.e. September 2021 reports are due by October 5, 2021). If the 5<sup>th</sup> falls on a weekend or holiday, the report is due the following business day. Supporting documentation is required for all requests. Failure to submit reports according to the period set forth by policies and procedures may result in delay or withholding of funds.

If no reimbursement is required during a specific month, the LEA shall send email notification to [Beth.McDaniel@ky.gov](mailto:Beth.McDaniel@ky.gov) stating no reimbursement is requested for said month.

Invoices/Reports shall contain the following elements legibly printed on the invoice:

1. LEA name, address
2. References OVR
3. Unique Invoice Number
4. Invoice Date
5. Description of services provided to OVR
6. Invoice Amount
7. Invoice breakdown, per line item

**NOTE:** If discrepancies exist, corrective action may include discussion with the LEA to ensure all service sessions are appropriate and accurate. If discrepancies are unable to be reconciled, this will result in reduction or denial of claim voucher. The LEA will be required to submit a corrected claim within ten (10) calendar days. Specific issues will be documented in writing and provided to the LEA.

## VI. Additional Education and Workforce Cabinet Terms and Conditions

## **1. Modifications or Amendments**

Proposed amendments, modifications, or revisions to this Agreement may be made at any time by either party but shall become valid and effective only when reduced to writing, duly signed by each of the parties hereto, and attached to the original of this Agreement.

## **2. Choice of Law and Forum Provisions**

The laws of the Commonwealth of Kentucky shall govern all questions as to the execution, validity, interpretation, and performance of this Agreement. Furthermore, the parties hereto agree that any legal action, which is brought based on this Agreement, shall be filed in the Franklin Circuit Court of the Commonwealth of Kentucky.

## **3. Pricing/Payments to Recipient**

OVR shall, in accordance with the provisions of this Section, pay the LEA as set forth below:

- a. For performance of the services specified herein, OVR agrees to pay the LEA pursuant to the terms set forth in the Budget.
- b. The schedule of payment to the LEA shall be on a monthly basis for expenditures actual services rendered and sent to for the total direct and indirect funds authorized for support of program work performance during the fiscal year or years set forth in this agreement

Invoices should be sent electronically to: [OVRInvoices@ky.gov](mailto:OVRInvoices@ky.gov)

- c. Payment: The vendor shall be paid, upon the submission of proper invoices to the receiving agency at the prices stipulated for the supplies delivered and accepted, or services rendered. Unless otherwise specified, payment will not be made for partial deliveries accepted. Payments will be made within thirty (30) working days after receipt of goods or a vendor's invoice in accordance with KRS 45.453 and KRS 45.454.

- i. Advance, Interim, and Final Payments

Any advance payment allowed under this Agreement shall comply with Commonwealth Fiscal Rules and be made in accordance with the provisions of this Agreement. Recipient shall initiate any payment request by submitting standard invoices to the Commonwealth. Payments shall be made on a reimbursement basis. Recipient may request payments monthly; however, the reimbursement amount for each request shall be no less than \$1,000 unless it is a request for final payment.

ii. Preliminary or Pre-Agreement Costs

Certain preliminary costs for services, incurred by the LEA prior to the execution of the award, may be reimbursable or included as part of allowable in-kind contributions. To be eligible, such costs shall be disclosed to the Commonwealth as preliminary and shall be subject to the cost principles set out in 2 CFR Part 200.

iii. Available Funds-Contingency-Termination

The Commonwealth is prohibited by law from making fiscal commitments beyond the term of the Commonwealth's current fiscal year. Therefore, the LEA's compensation is contingent upon the continuing availability of Commonwealth appropriations. If federal funds are used with this Agreement in whole or in part, the Commonwealth's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Agreement shall be made only from available funds encumbered for this Agreement and the Commonwealth's liability for such payments shall be limited to the amount remaining of such encumbered funds. If Commonwealth or Federal funds are not appropriated, or otherwise become unavailable to fund this Agreement, the Commonwealth may immediately terminate this Agreement in whole or in part without further liability in accordance with the provisions herein.

iv. Use of Funds

Pursuant to 2 CFR 200.420 to 200.475, funds shall be used only for eligible costs identified in the Budget.

#### **4. Confidentiality**

Personnel employed by OVR, and the LEA, assigned to provide cooperative services to participants with disabilities will have access to confidential information that has been provided through the appropriate legal procedures of the respective agencies. No information will be re-released by either party without the informed written consent of the program participant, except as allowed or authorized under applicable state or federal law. Any request or demand by a third party for OVR records and information in the possession of the LEA shall be immediately forwarded to the OVR's principal representative.

All parties agree that any consumer information disclosed by OVR to the LEA pursuant to this agreement is confidential pursuant to 34 CFR 361.38, and any and all other relevant and applicable federal and state statutes and regulations. Disclosure of any

consumer information covered under this agreement to any party unauthorized by OVR to receive said information may result in immediate termination of this agreement any and all other relevant and applicable penalties and sanctions to the disclosing party.

a. Notification

The LEA shall notify its Agent, Employees, Subcontractors, and assigns who may be exposed to OVR records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

b. Use, Security and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by the LEA or its agents in any way except as authorized by this Agreement or approved in writing by the Commonwealth. The LEA shall provide and maintain a secure environment that ensures confidentiality of all OVR records and other confidential information wherever located.

## **5. Fiscal Controls**

The LEA will utilize those fiscal controls and fund accounting procedures as may be necessary to ensure proper disbursement of and accounting of all funds disbursed to the LEA by OVR. Those controls and procedures must be sufficient to permit preparation of reports required by laws authorizing the grant of said funds, and sufficient to permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable laws.

## **6. Records**

a. Retention

The LEA shall maintain all records for three (3) years after the Agreement ends and the final financial report is submitted or until all audit questions are resolved, whichever is later.

b. Type of Records

The LEA shall maintain records related to this agreement that fully disclose and document:

- i. The amount and disposition by the LEA of all funds received by it from the Commonwealth.

- ii. The total cost of the project or undertaking in connection with the project with which the funds are given or used.
- iii. The amount of that portion of cost of the project supplied by other sources.
- iv. All expenses, including payroll records, to ensure that costs reported on invoices are allowable, allocable, and reimbursable costs under the award.
- v. How the LEA has separated grant expenditures in order to properly allocate costs to existing grants and ensure compliance with the requirements of the award.

## **7. Conflict of Interest**

- a. All employees or representatives of the LEA shall comply with all applicable state and federal laws, regulations and policies regarding conflicts of interest. The LEA shall immediately disclose to OVR any conflict of interest that it become aware of.
- b. The LEA shall include the substance of this Section in all subcontracts.

## **8. Audit**

- a. The LEA agrees to maintain financial procedures and support documents, in accordance with generally accepted accounting principles, to account for the receipt and expenditure of funds under this Agreement.
- b. These records shall be available at all reasonable times for inspection, review, or audit by state personnel and other personnel duly authorized by OVR.  
“Reasonable” shall be construed according to circumstances, but ordinarily shall mean normal business hours of 8:00am to 4:30pm, local time, Monday through Friday.
- c. The LEA shall also provide OVR with the records, reports or financial statements upon request for the purposes of auditing and monitoring the funds awarded under this Agreement.
- d. If the LEA is a non-profit organization, state, or local government as defined in OMB Circular A-133 (now 2 CFR §§ 200.64, 200.70 and 200.90), as revised, and in the event that the LEA expends \$750,000 or more in Federal awards in its fiscal year, the LEA must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133 (now 2 CFR § 200.501).
- e. A non-Federal entity that expends less than \$750,000 during the non-Federal entity’s fiscal year in Federal awards is exempt from Federal audit requirements

for that year, except as noted in 2 CFR §200.503, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

- f. In the event an audit shows that the entire funds disbursed hereunder, or any portion thereof, were not spent in accordance with the conditions of this Agreement, the LEA shall be held liable for reimbursement to OVR of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty (30) days after OVR has notified the LEA of such noncompliance.
- g. If the LEA is subject to Single Audit requirements, the LEA shall have either all audits completed by an independent certified public accountant (IPA) who shall be a certified public accountant or a public accountant licensed under applicable Kentucky laws. The IPA shall state that the audit complied with the applicable provisions noted above. The audit must be submitted to OVR no later than seven (7) months from the end of the LEA's fiscal year.

## **9. Subcontracting**

The LEA agrees that it will not subcontract any work done pursuant to this Agreement without the express, written consent of OVR. If said consent is given, the LEA agrees that all requirements of the Agreement shall also be applicable to Subcontractors and that the subcontractors shall be required to report to the LEA in a manner that will meet the LEA's reporting requirements to OVR. In no event shall any provision of this Section be construed as relieving the LEA of the responsibility for ensuring that the performances rendered under all subcontracts comply with all of this Agreement's terms as if the LEA rendered such performances rendered.

## **10. Erroneous Payments**

At the Commonwealth's sole discretion, payments made to LEA in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by LEA, may be recovered from LEA by deduction from subsequent payments under this Agreement or other grants or agreements between the Commonwealth and LEA or by other appropriate methods and collected as a debt due to the Commonwealth. Such funds shall not be paid to any party other than the Commonwealth.

## **11. Debarment**

The LEA certifies by its signature on this Agreement that neither it nor its principals, agents, contractors and vendors are presently debarred, suspended or proposed for



debarment, declared ineligible for federal benefits by any federal or state department or agency, or sentenced to a denial of federal benefits by a state or federal court, and is not listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Order (E.O.) 12549 and E.O. 12689.

## **12. Breach, Notice and Cure**

In addition to any breaches specified in other sections of the Agreement, the failure of either party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach. In the event of a breach, the aggrieved party shall give notice of such in writing to the other party. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the Commonwealth may exercise any of the remedies set forth in the Remedies section.

## **13. Remedies**

If the LEA is in breach under any provision of this Agreement, the Commonwealth shall have all of the remedies listed in this section in addition to all other remedies set forth in other sections of this Agreement following the notice and cure period set forth in the Breach, Notice and Cure section. The Commonwealth may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively, subject to the right of the LEA to exercise any available appeal rights.

### **a. Termination for Cause and/or Breach**

If the LEA fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Agreement and in a timely manner, the Commonwealth may notify the LEA of such non-performance in accordance with the provisions herein. If the LEA thereafter fails to promptly cure such non-performance within the cure period, the Commonwealth, at its option, may terminate this entire Agreement or such part of this Agreement as to which there has been delay or a failure to properly perform. Exercise by the Commonwealth of this right shall not be deemed a breach of its obligations hereunder. The LEA shall continue performance of this Agreement to the extent not terminated, if any.

### **b. Obligations and Rights**

To the extent specified in any termination notice, the LEA shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and sub-Grants with third parties. However, the LEA shall complete and deliver to the Commonwealth all

Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Agreement's terms. At the sole discretion of the Commonwealth, the LEA shall assign to the Commonwealth all of the LEA's right, title, and interest under such terminated orders or sub-Grants. Upon termination, the LEA shall take timely, reasonable and necessary action to protect and preserve property in the possession of the LEA in which the Commonwealth has an interest. All materials owned by the Commonwealth in the possession of the LEA shall be immediately returned to the Commonwealth. All work product, at the option of the Commonwealth, shall be delivered by the LEA to the Commonwealth and shall become the Commonwealth's property.

c. Payments

The Commonwealth shall reimburse the LEA only for accepted performance up to the date of termination.

d. Remedies Not Involving Termination

The Commonwealth, as its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance

Suspend the LEA's performance with respect to all or any portion of this Agreement pending necessary corrective action as specified by the Commonwealth without entitling the LEA to an adjustment in price/cost or performance schedule. The LEA shall promptly cease performance and incurring costs in accordance with the Commonwealth's directive and the Commonwealth shall not be liable for costs incurred by the LEA after the suspension of performance under this provision.

ii. Temporarily Withhold Payment

Payment will be made upon satisfactory delivery of services.

iii. Disallow or Deny Payment

Deny payment for those obligations not performed, or, that due to the LEA's actions or inactions, cannot be performed; provided, that any denial of payment shall be reasonably related to the value to the Commonwealth of the obligations not performed.

iv. Removal

Demand removal of any of the LEA's employees, agents, or subcontractors whom the Commonwealth deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Agreement is deemed to be contrary to the public interest, not in the Commonwealth's best interest, or jeopardizes the Commonwealth's obligations to the United States Department of Education.

v. Intellectual Property

If the LEA infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Agreement, the LEA shall, at the Commonwealth's option:

- a. Obtain for the Commonwealth or the LEA the right to use such products and services;
- b. Replace any goods, services or other product involved with non-infringing products or modify them so that they become non-infringing; or,
- c. If neither of the foregoing alternatives are reasonably available, remove any infringing goods, services or products and refund the price paid therefore to the Commonwealth.

vi. Any Other Available Remedy

The Commonwealth shall take any other remedy that may be legally available to it.

#### **14. Assurances**

This Agreement involves the expenditure of federal funds. Therefore, the LEA shall at all times during the execution of this Agreement strictly adhere to and comply with all applicable federal laws and regulations, as they currently exist and may hereafter be amended, which are subject to the terms and conditions incorporated either directly or by reference in this Agreement. The LEA shall also require compliance with these statutes and regulations in subcontractor grant agreements permitted under this Agreement. The federal laws and regulations include but are not limited to:

- a. Program Legislation/regulation;

- b. Education Department General Administrative Regulation (EDGAR), 34 CFR Parts 74-99;
- c. Rehabilitation Act of 1973, as amended, 29 USC 701 et seq.
- d. Special terms and provisions specified in the Notice of Federal Financial Assistance Grant Award;
- e. Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60). [All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subcontractors];
- f. The Copeland "Anti-Kickback" Act (18 U.S.C. § 874) as supplemented in Department of Labor regulations (29 CFR Part 3). [All contracts and subgrants for construction or repair in excess of \$2,000];
- g. Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). [Construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers];
- h. Standards, orders, or requirements issued pursuant to the Clean Air Act (42 U.S.C. §7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251 et seq.). Violations shall be reported to USDE and the Regional Office of the Environmental Protection Agency (EPA);
- i. Mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan, issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163);
- j. Office of Management and Budget Circulars 2 CFR Part 200, 2 CFR Parts 215 and 220 (formally A-21), 2 CFR 225 (formally A-87), 2 CFR 215 (formally A-110), 2 CFR 230 (formally A-122) and A-133, as applicable;
- k. The Hatch Act (5 U.S.C. §§ 1501-1508) and Public Law 95-454, Section 4728. These statutes state that any person or organization involved in the administration of federally assisted programs cannot use federal funds for partisan political purposes of any kind;
- l. The Americans with Disabilities Act (Public Law 101-336; 42 U.S.C. §§ 12101, 12102, 12111-12117, 12131-12134, 12141-12150, 12161-12165, 12181-12189, 12201-12213, 47 U.S.C. § 225 and 47 U.S.C. § 611;

- m. The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.);
- n. Restrictions on Lobbying (1) Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (2) 43 CFR 18; and;
- o. Civil Rights Assurance. The undersigned is subject to 42 U.S.C. §§ 2000d, The Age Discrimination Act of 1975, 42 U.S.C. §§ 6101 et seq., and its implementing regulation 45 CFR Part 91, Title VI and VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and implementing regulation, 45 CFR Parts 80, 84 et seq.; Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and offers all persons the opportunity to participate in programs or activities regardless of race, color, national origin, age, sex, or disability. These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds. Further, it is agreed that no individual will be turned away from or otherwise denied access to or benefit from any program or activity that is directly associated with a program of the LEA on the basis of race, color, national origin, age, sex (in education activities) or disability.
- p. Protection of Human Subjects. To the extent applicable to it, the LEA agrees to comply with the requirements set out in 34 CFR Part 97 relating to research that involves human subjects.
- q. Drug and Alcohol Abuse Prevention Program. The LEA agrees to comply with the requirements set out in 34 CFR Part 86, requiring institutions of higher education that receive federal assistance to certify that it has adopted and implemented a drug abuse prevention program.

## **15. Assignment and Subgrants**

The LEA's rights and obligations hereunder are personal and may not be transferred, assigned or sub-granted without the prior, written consent of the Commonwealth. Any attempt at assignment, transfer, sub-granting without such consent shall be void. All assignments, sub-grants, or Subcontractors approved by the LEA or the Commonwealth are subject to all of the provisions of this Agreement. The LEA shall be solely responsible for all aspects of sub-granting arrangements and performance.

## **16. Binding Effect**

Except as otherwise provided, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

## **17. Captions**

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

## **18. Counterparts**

This Agreement may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

## **19. Entire Understanding**

This Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein.

## **20. Indemnification-General**

To the extent permitted by Kentucky law, the LEA agrees to hold OVR harmless and to indemnify OVR from and against any and all claims, demands and causes of action of every kind and character that may be asserted by any party occurring or in any way incident to, arising out of or in connection with the services to be performed by the LEA or its subcontractors, if any, pursuant to this Agreement.

## **21. Severability**

Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

## **22. Survival of Certain Terms**

Notwithstanding anything herein to the contrary, provisions of this Agreement requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the Commonwealth if the LEA fails to perform or comply as required.

## **23. Third Party Beneficiaries**

Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

#### **24. Waiver**

Waiver of any breach of a term, provision, or requirement of this Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

#### **25. Representations and Certifications**

The LEA makes the following specific representations and certifications, the Commonwealth in entering into this agreement relied on each of which:

##### **a. Standard and Manner of Performance**

The LEA shall use its best efforts to perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the field, industry, trades or profession and in the sequence and manner set forth in this Agreement.

##### **b. Licenses, Permits, Etc.**

The LEA represents and certifies that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. The LEA certifies that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Agreement, without reimbursement by the Commonwealth or other adjustment in Agreement Funds. Additionally, all employees and agents of the LEA performing Services under this Agreement shall hold all required licenses or certifications, if any, to perform their responsibilities. The LEA, if a foreign corporation or other foreign entity transacting business in the Commonwealth of Kentucky, further certifies that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the Commonwealth of Kentucky and has designated a registered agent in Kentucky to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for the LEA to properly perform the terms of this Agreement shall be deemed to be a material breach by the LEA and constitute grounds for termination of this Agreement.

## **26. Reporting Requirements**

The LEA shall comply with the following reporting requirements:

### **a. Performance and Progress**

The LEA shall file quarterly progress reports with the Commonwealth detailing the status of the project and extent to which it has been completed. The first such quarterly report shall be due three (3) months after the LEA receives the notice to proceed, and every three (3) months thereafter until the Commonwealth performs final approval of the completed project. The quarterly reports shall reflect the LEA's progress in meetings its stated goals and objectives. After the project is completed, the LEA shall file an annual report with the Commonwealth. The Commonwealth may waive in writing any quarterly or annual performance report if deemed unnecessary, provided the Commonwealth would still be able to meet its performance reporting obligations to the Federal agency.

### **b. Expenditure Certification**

To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the LEA entity, which reads as follows: "I certify that all expenses reported (or payments requested) are for appropriate purposes and in accordance with the Agreement set forth in the application and award documents."

### **c. Litigation Reporting**

Within ten (10) days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Agreement or which may affect the LEA's ability to perform its obligations hereunder, the LEA shall notify the Commonwealth of such action and deliver copies of such pleadings to the Commonwealth's principal representative as identified herein. If the Commonwealth's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of OVR.

### **d. Noncompliance**

The LEA's failure to provide reports and notify the Commonwealth in a timely manner in accordance with this section may result in the delay of payment of funds and/or termination as provided under this Agreement.

## **27. Approvals**



**a. Signatory Authority**

The LEA assures and guarantees that the LEA possesses the legal authority to enter into this Agreement, to receive funds pursuant to and authorized by this Agreement and to perform the services the LEA has obligated itself to perform pursuant to this Agreement.

**b. Authorized Representative**

The person or persons signing and executing this Agreement on the LEA's behalf do warrant and guarantee that he, she or they have been duly authorized by the LEA to execute this Agreement on the Contractor's behalf and to validly and legally bind the LEA to all contractual terms, performances and provisions. If requested, the LEA will provide OVR with documents granting authority to the designated representative authorizing them to execute documents for this purpose.

**28. Certification of No Criminal Activity**

The LEA certifies that it and its principals have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, or gratuity violations potentially affecting the award of federal grant funds. The LEA further certifies that it is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in this certification. The LEA certifies that it will disclose to OVR in a timely manner in writing all offenses enumerated in this certification.

**29. Miscellaneous**

Each party shall bear its own attorneys' fees and costs that may arise out of the enforcement of this contract.

**By signing this MOU, all parties agree electronic approvals may serve as electronic signatures.**

**Approved by:**

**Date:**

**Signature:**

Executive Director, Office of Vocation Rehabilitation

**Date:****Signature:**

Superintendent, Local Education Authority