



# Commonwealth of Kentucky

## CONTRACT

OK AS TO FORM  
A.M.H. 8.4.2022

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Record Date:

Document Description: Jefferson Co. Board of Education - OAE FY23

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

Reason for Modification:

**Issuer Contact:**Name: Beth Tincher  
Phone: 502-564-2770  
E-mail: bethj.tincher@ky.gov**Vendor Name:**

JEFFERSON COUNTY BOARD OF EDUCATION

3332 NEWBURG RD

LOUISVILLE KY 40218

**Vendor No.**

KY0035849

**Vendor Contact**Name: CORDELIA HARDIN  
Phone: 502-485-3353  
Email: CORDELIA.HARDIN@JEFFERSON.KYSCHOOLS.US**Effective From:** 2022-07-01**Effective To:** 2023-06-30

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
1		0.00000		Core Service	\$0.000000	\$2,558,985.00	\$2,558,985.00

**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 Office of Adult Education (OAE) Program Manual.

Budgeted source of funds: 62% state, 38% federal (CFDA 84.002 A, Adult Education State Grant Program); Federal Award Number (FAIN) V002A200017-(\$9,181,497), V002A210017 (\$9,537,659) and/or V002A220017 (\$9,753,213) and DUNS# 161181144 (Awarded July 1, 2020/July 1, 2021, July 1, 2022) UEI# JMM1JDK121H7. Federal funds made available from Office of Career, Technical, and Adult Education -US Department of Education.

OAE is currently negotiating a restricted rate agreement.

Contractor Approved Restricted Indirect Cost Rate up to 0.0 Per IG

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

Sub recipient Federal Identification Number: 61-6001316

Final invoice for payment is due July 21, 2023. Invoices received after this date may be delayed or withheld. This is the First budget period of three budget periods.

**Effective From:** 2022-07-01**Effective To:** 2023-06-30

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
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2		0.00000		Performance Funding	\$0.000000	\$134,683.00	\$134,683.00
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**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 FY22 performance and displayed in the on-line OAE Finance Module.

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

**Effective From:** 2022-07-01

**Effective To:** 2023-06-30

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
3		0.00000		Federal Supplement	\$0.000000	\$469,727.00	\$469,727.00

**Extended Description:**

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

Method of payment: cost-reimbursement upon receipt and approval of monthly OAE Expenditure Report submitted online. All costs must be reasonable, allowable and actual. Maximum Administrative expense is 5%.

The funding is 100% federal WIOA Title II CFDA 84.002

Shipping Information:	Billing Information:
Education & Workforce Development 500 Mero Street  Frankfort KY 40601	Education & Workforce Development 500 Mero Street  Frankfort KY 40601

<b>TOTAL CONTRACT AMOUNT:</b>	<b>\$3,163,395.00</b>
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## Memorandum of Agreement Template

Revised December 2022

This Memorandum of Agreement (MOA) is entered into, by and between the Commonwealth of Kentucky, Education and Workforce Development Cabinet, Kentucky Adult Education Office of Adult Education (OAE) ("the Commonwealth") hereinafter referred to as the First Party and Jefferson Co. Board of Education, ("the Contractor") hereinafter referred to as the Second Party to establish an agreement to 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 OAE Program Manual. The initial MOA is effective from 7/1/2022 through 6/30/2023.

### **CONTRACT RENEWAL PROCESS:**

Adult Basic Education grants will be awarded with the intent to ensure all counties in each Local Workforce Area (LWA) receive adult education services. Grants are formula-based, with allocations based on each county's population of individuals eligible for services per page 7 of the Request for Applications (RFA) 2022-2025 Guidelines.

All awards are subject to the availability of funds from the federal and state government. A delay in the receipt of federal and/or state allocations may delay the issuance of contracts. A grantee may not begin to obligate expected grant funds until authorized by the Office of Adult Education (OAE) per page 47 of the RFA 2022-2025 Guidelines.

Contract Renewal will be based on a continuous improvement model consisting of but not limited to review of local provider performance and compliance with the RFA 2022-2025 Guidelines and Contract requirements. Satisfaction of the below performance thresholds will be a component of the Contract Renewal Review process:

Mid-year/End of 2nd Quarter (QTR) Performance Progress Rate will be a minimum of the State Measurable Skills Gain (MSG) Rate average.

End of 3rd QTR Performance Progress Rate will meet or exceed the U.S. Department of Education (U.S. DOE), Office of Career, Technical, and Adult Education (OCTAE) FY 23 (Performance Year-PY 22) Negotiated MSG Rate.

Local Providers below the 3rd QTR Progress Rate minimum requirement will be reported to the Cabinet Deputy Secretary and Commissioner for failure to meet contract requirements.

The geographical service area (county/counties) served by Local Providers who fail to demonstrate progress (minimum standard of 3rd QTR Progress Standard/Threshold) by 1 May of the FY and who were reported for failure to meet contract requirements, may be included in a Request for Applications (RFA) for Adult Education services for FY 24/PY 23 (Example: If Local Provider X serves counties A,B, and C. Counties A, B, and C may be available for current local providers and/or new applicants to compete to provide adult education services in those counties for the upcoming FY/PY).

OAE will consider the above performance thresholds among other Cabinet and State priorities which include but not limited to: (1) Grant Requirements for Funding, AEFLA, Title II Programs in Kentucky per page 16 of the RFA 2022-2025 Guidelines; (2) State-Specific Requirements per pages 16-17 of the RFA 2022-2025 Guidelines; and (3) Year-Round Services Commitment per page 38 of the RFA 2022-2025 Guidelines as it relates to the delivery of adult education services across the 120 counties and the needs of specific service areas during the contract renewal process.

### **SCOPE OF SERVICES**

Provide services that comply with The Workforce Innovations and Opportunity Act, Title II and corresponding regulations, The Kentucky Adult Education Act of 2000, the Request for Applications (RFA) Guidelines 2022-2025, the Kentucky PY 2022-2023 (Modification) State Plan and with the current OAE Program Manual.

OAE administers federal and state funds for the provision of AE services which are 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.408, KRS151B.409, the OAE State Plan, Program Manual, and implementing regulations.

Family Literacy Component (as applicable)

OAE 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.408 and KRS 158.360.

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### **SPECIFIC CONDITIONS AND CONDITIONS REMOVAL CRITERIA:**

Per Title 2 Code of Federal Regulations (CFR) Section 200.208, local providers notified of Specific Conditions based on the identification of potential concerns regarding the history of compliance with the conditions of a Federal award and or the ability to meet expected performance goals will be governed by the following minimum quarterly performance guidelines:

- (a) Achieve the State Measurable Skills Gain (MSG) Rate average by the End of the 1st quarter (QTR ) per State Rankings released no later than (NLT) 15 October (For reference only – State MSG Rate average as of 16 May 2022 is 43.4%)
- (b) Achieve the State MSG Rate average by the End of the 2nd QTR per State Rankings released NLT 15 January (State MSG Rate average may be different from 1st QTR average).
- (c) Achieve the U.S. Department of Education (U.S. DOE), Office of Career, Technical and Adult Education (OCTAE) Negotiated MSG Rate/Federal Goal by the End of the 3rd QTR per State Rankings released NLT 15 April (Expected FY 23/Performance Year (PY) 22 OCTAE Negotiated MSG Rate is 45.20%).
- (d) Achieve or exceed the OCTAE Negotiated MSG Rate NLT 31 May through the End of the 4th QTR/ End of Year (EOY).

Local Providers below the 1st QTR State MSG Rate average will be put on a Performance Improvement Plan (PIP) by the Director, Program Administration, Performance, and Compliance (PAPC) Branch.

Local Providers below the 2nd QTR State MSG Rate average who are on a PIP will be provided a list of possible dates for a meeting and site visit with the Executive Director and potentially select Cabinet personnel to address performance failures during the Mid-year Review process.

Local Providers who satisfy (Meet or Exceed) the 2nd QTR State MSG Rate average as determined by the 2nd QTR State Rankings will have Specific Conditions removed for the remainder of the FY. The performance and progress towards achieving targets and State-Specific Requirements for all Local Providers will be assessed per the Contract Renewal process during the 4th QTR each FY.

A list of Local Providers below the OCTAE Negotiated MSG Rate by the End of the 3rd QTR will be submitted to the Education and Labor Cabinet senior leadership for failure to meet contract requirements.

The geographical service area (county/counties) served by Local Providers who fail to demonstrate progress (minimum standard of continuous improvement towards achieving or exceeding the OCTAE Negotiated MSG Rate) by 1 May of the FY and who were reported for failure to meet contract requirements, may be included in a Request for Applications (RFA) for Adult Education services for FY 24/PY 23 (Example: If Local Provider X serves counties A,B, and C. Counties A, B, and C may be available for current local providers and/or new applicants to compete to provide adult education services in those counties for the upcoming FY/PY).

Conducting an RFA process for specific service areas is not the intent of the Office of Adult Education, however, meeting the adult education needs of Kentuckians and addressing gaps in service delivery efforts will impact the recommendation to the Education and Labor Cabinet.

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

Operate a program in compliance with the Plan of Service, Kentucky State Plan, Performance Measures and Budget(s). Individuals employed by the Second Party are considered employees of the provider, not OAE; 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;

Operate a program in compliance with the provisions of the Kentucky Adult Education Program Manual as amended from time to time, located in Kentucky Adult Education Reporting System (KAERS), and hereby incorporated by reference; and

Operate a program in compliance with the approved proposal, which is hereby incorporated by reference.

In the event of a declaration of national or state emergency, provision of distance learning services is expected to continue according to guidance from KYAE 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:**

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### **CONFIDENTIALITY**

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 client, or as otherwise by law in accordance with the provisions of 5 U. S. C. § 552a which governs the release of public information.

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;

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

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;

Maintain a copy of signed security agreements in the personnel files of the respective employees and make copies available to OAE or designated agent upon request;

Ensure that only authorized employees are given access to the KAERS; and

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

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

KRS 61.932 is the controlling law regarding data breach investigation and personal security protection.

### **INDEMNITY**

The Second Party shall indemnify OAE 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, or invitees that result in injury to persons, corporations, partnerships, or any other entity. Also, it shall indemnify OAE from any and all liability, loss, or damage that OAE 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 49.040 through KRS 49.180, 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 OAE 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.

### **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 OAE.

### **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 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 OAE no later than March 31, 2023. 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 OAE no later than March 31, 2023.

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

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In addition, OAE 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.

#### **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 OAE by the second party and on a county-by-county basis.

Indirect charges are allowable at the restricted rate if the entity has an approved restricted indirect cost rate agreement. Otherwise, and because this is a supplement and not supplant award, organizations that do not have a restricted indirect cost rate agreement, may elect to utilize a restricted indirect cost rate of 8% modified total direct costs (MTDC) if their negotiated indirect cost rate is not less than 8% modified total direct costs. All indirect cost charges will be reported as part of the programs administrative funds and meet the caps and guidance available in the contract and Program Manual.

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 OAE to the Second Party, as well as the Second Party's 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:**

Submit monthly expenditure reports to OAE 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.

Submit the final year-end on-line invoice detailing actual cost incurred no later than July 22, 2023, unless notified otherwise in writing by OAE.

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, 2023.

Expenditures that exceed the approved budget line are not eligible for reimbursement.

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.

Reimburse OAE within 60 days of notification for any unresolved costs and/or payments that are disallowed as of a result of OAE policy, federal/state guidelines, and/or audit findings.

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.

Failure by the Second Party to adhere to OAE or other reporting requirements may result in:

Reimbursements being delayed or withheld; or

The 30-day contract termination clause being invoked by OAE.

#### **FINANCIAL MANAGEMENT SYSTEM**

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



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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);

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;

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;

Submit a cumulative inventory report form on-line using the OAE KAERS Finance Module on or before August 31, 2023, for all non-consumable property with a life expectancy of one year or more and acquired with OAE funds. Cumulative inventory is defined as any inventory purchase made with OAE funds under this agreement or any previous agreement with OAE (previously known as DAEL). All property purchased with Adult Education funds will revert to OAE 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.

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.

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

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

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 OAE.

#### **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 OAE. All materials produced should be tagged with "A Proud Partner of the American Job Center Network".

#### **COPYRIGHTING**

OAE 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.

#### **EXTENSION/AMENDMENTS**

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

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 OAE KAERS Finance Module prior to invoicing with the reallocated budget. Notification of reallocation must be received by OAE no later than March 31, 2023.

In exceptional circumstances and for good cause shown, 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 OAE in the OAE Finance Module no later than March 31, 2023 and will be considered on a case-by-case

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basis. Approval from OAE must be secured prior to expending funds based upon any reallocation in excess of 10% of the original line item.

#### **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.

#### **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 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.

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.

#### **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.

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

The Second Party certifies that neither the Second Party nor its principals:

Are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Adult Education or agency;

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;

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;

Have within a three-year period preceding this contract had one or more public transaction terminated for cause or default;

Where the Second Party is unable to certify to any of the statements in this certification, they shall submit an explanation to OAE; and

The instructions for certification, which are an integral part of this certification, have been read and agreed to by the Second Party.

#### **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 of Congress in connection with the making of any federal grant, the entering into any cooperative contract, and the extension,



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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.

#### **SAFETY**

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

#### **REMEDIES FOR BREACH**

In the event of breach of contract by the Second Party, OAE 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, OAE agrees to:

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

provide information, consultation, technical assistance, and forms;

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.

#### **PROGRAM DESIGN AND ACTIVITIES**

The Second Party agrees to the following:

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

who-

is basic skills deficient;

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.

Assess students to determine their academic level utilizing an enrollment assessment instrument recognized by OAE. Administer standardized tests consistent with OAE assessment policy.

Entities receiving funding as described in the Program Manuals performance Funding Model, shall expend those performance funds in accordance with OAE fiscal policies and procedures.

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

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

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 OAE for review and approval.

Adhere to all requirements outlined in the OAE Program Manual.

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

#### **REPORTING**

The Second Party agrees to:

Submit the OAE Expenditure Report monthly in compliance with the Method of Payment as outlined in this contract, II. F. 1-8;

Submit to OAE by August 31, 2023, a cumulative Inventory Report on-line for all non- consumable items purchased with OAE funds (II. G. 4);

Submit a copy of the single audit as per section II. E of this document by March 31, 2023; and that

Failure by the Second Party to adhere to OAE reporting requirements may result in:

Reimbursements being delayed, reduced or withheld; or

OAE invoking the 30-day contract termination clause.

#### **PROFESSIONAL DEVELOPMENT**

The Second Party agrees to:

Adhere to OAE Professional Development and Training Policy as detailed in the OAE Program Manual Guidelines, which may be amended from time to time; and

Ensure that expenditure for professional development activities follows the Fiscal Guidelines for Professional Development in accordance with OAE Program Manual and the Professional Learning Handbook for OAE approved professional activities.

#### **CORRECTIONS**

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 KYAE policies and contract payment and reporting requirements as specified in this document. If unique circumstances arise and the Second Party elects not to offer services in a correctional facility, the OAE will be notified of the circumstances. OAE reserves the right to secure services from another entity.

#### **PROGRAM ASSURANCES FY 2023**

Assurances to Kentucky Adult Education, Education and Labor Cabinet (KYAE), under authority of Title II of the Workforce Innovation Opportunity Act of 2014, P.L. 113-128, KRS 151B.406-.409, KRS 158.360, and KRS 164.020-0211. The Second Party assures Kentucky Adult Education, Education and Workforce Development Cabinet that:

The information contained in the application/proposal is correct and accurate to the best knowledge of the second party.

The second party will comply with all provisions of the OAE Program Manual. (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.)

The second party will meet enrollment, academic performance, GED, State-Specific Requirements per pages 16-17 of the RFA Guidelines and transition goals. (This is a State Requirement.)

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.)

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 OAE's managed program design parameters. (This is a State Requirement.)

The second party will incorporate OAE College & Career Readiness Standards into classroom use. (This is a State Requirement.)

A major indicator of program success is a high-quality instructional staff and instructional leadership. The second party assures that all staff will meet OAE minimum personnel requirements as specified in the OAE

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Program Manual Guidelines, and that new staff will be hired through a structured, rigorous recruitment and selection process. (This is a State Requirement.)

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.)

The second party will adhere to all OAE data collection and reporting requirements. (This is a State Requirement.)

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.)

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.

OAE funds shall not be expended for any purposes other than the direct provision of the adult education services.

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.

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

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.

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, 2023. (This is a state requirement)

To maximize the amount of funds available for direct instructional services, OAE expects adult education programs to pay minimal or no rent for space, however the needs of adult learners and the priorities of the Cabinet and the State take precedence over seeking space at minimal or no cost; those located in publicly-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.

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.

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.

Space and Space Rental

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1. Fiscal agents are encouraged to seek donated or in-kind space in order to avail the maximum level of resources to student instruction, however, student needs, synchronization with WIOA partners and other stakeholders take priority over donated or in-kind space. Exceptions will receive favorable consideration if based on the aforementioned priorities.
2. Postsecondary education institutions receiving grants must exhaust available spaces on their postsecondary campus for the primary site for the delivery of adult education services prior to seeking off-campus space.
3. The intent is for MOUs/IFAs with state and local workforce investment boards to cover all pertinent needs associated with the delivery of adult education services, however, any charges for co-location within the Kentucky Career Center locations in support of student needs, WIOA partnership coordination and referrals and state priorities will receive favorable consideration for supplemental funding. Any supplemental funding approval and disbursement will be based on the availability of funds. Fiscal agents will ensure that all instructional facilities and services are in compliance with the Americans with Disabilities Act of 1990, as amended.

~~State and Federal funds are to be used for AE services:~~

If it is determined through a OAE 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;

The degree to which the eligible provider would be responsive to-

Regional needs as identified in the local plan under section 108; and

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;

The ability of the eligible provider to serve eligible individuals with disabilities, including eligible individuals with learning disabilities;

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;

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;

Whether the eligible provider's program-

Is of sufficient intensity and quality, and based on the most rigorous research available so that participants achieve substantial learning gains; and

Uses instructional practices that include the essential components of reading instruction;

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;

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;

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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;

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.

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;

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;

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

Whether the local areas in which the eligible provider is located have a demonstrated need for additional English language acquisition programs and civics education programs.

#### **Term and Termination**

The Agreement is effective from July 1, 2022, to June 30, 2023.

This Agreement may be renegotiated or terminated by either the Commonwealth or Contactor with 30 days written notice to the other party. In the case of termination, the Contractor will be paid for work successfully completed through the effective date of termination. Termination shall not affect the rights and obligations of the parties accrued prior to termination.

Any modification or amendment to this Agreement must be in writing in the form of an amendment which must be signed by authorized representatives of both parties to become effective.

#### **Default**

No default in the performance of any of the obligations of Commonwealth or Contractor under this Agreement, nor any action, non-action, concession or indulgence by Contractor or Commonwealth shall operate to terminate, cancel, repudiate or surrender this Agreement, or except as specifically provided in such Agreement, to relieve Commonwealth or Contractor from due and punctual compliance with its obligations thereunder.

#### **No Agency**

Nothing in this Agreement shall create any association, joint venture, partnership, employment, or agency relationship of any kind between the parties. Neither party is authorized to incur any liability, obligation or expense on behalf of the other.

#### **Notices**

Any notice required hereunder shall be made in writing and shall be sent and delivered by email, facsimile, mail, hand delivery, common carrier, or by any other means of delivery, provided that any method or means

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of delivery shall provide for confirmation that such notice was actually received by the intended recipient, the intended recipient's office or the intended recipient's email account, not including spam filters. Confirmations include, but are not limited to, facsimile receipts, email receipts, certified or registered mail receipts, or any other form of written acknowledgment of receipt by the intended recipient or the office of the intended recipient. The recipient of any notice shall immediately confirm receipt of the notice in the manner requested. Notice shall be effective when actually received.

#### **Force Majeure**

Neither party shall be liable for failure to perform its obligations under this Agreement due to events beyond its reasonable control, including, but not limited to, strikes, riots, wars, fire, acts of God, and acts in compliance with any applicable law, regulation or order (whether valid or invalid) of any governmental body.

#### **Arbitration**

Arbitration shall not be available to the parties as a method of dispute resolution for the purposes of this Agreement.

#### **Entire Agreement**

This Agreement constitutes the entire agreement of the parties. No modification of this Agreement shall be binding unless reduced to writing and signed by the parties.

#### **Assignment**

Neither party shall assign his or her interest in this Agreement, nor transfer his or her interest in the property covered by this Agreement without first having received the written consent of the other party. Any assignment or attempted assignment without such written consent shall be inoperative and void, except as otherwise provided by law.

#### **Severability**

If any part, term or clause of this Agreement is held by a court to be unenforceable, of no effect or in conflict with any law, the validity of the remaining provisions and clauses shall not be affected, and the rights and obligations of the parties shall be construed and in force as if the Agreement did not contain the particular part, term or clause held to be unenforceable.

#### **Waiver**

The failure of any party to exercise or enforce in any respect any right or provision provided for in this Agreement shall not be deemed a waiver of any such right or provision.

#### **Counterparts**

This Agreement has been prepared and may be executed in multiple counterparts, as well as via facsimile or electronically transmitted signature, each of which shall constitute an original.

#### **Governing Law**

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The parties agree that exclusive jurisdiction and venue to resolve any dispute shall be in the Circuit Court of Franklin County, Kentucky. Both parties agree to the personal jurisdiction of said court. This Agreement shall be interpreted and governed by Kentucky law.

#### **Dispute Resolution**

In any litigation between the parties arising from or in any way pertaining to the interpretation or enforcement of this Agreement, including any action for rescission of this Agreement, each party shall be responsible for its own attorneys' fees and court costs.

#### **Conflict in Terms**

The following "Standard Terms and Conditions" will supersede the foregoing terms in any conflict or disagreement that may arise between the foregoing terms and the "Standard Terms and Conditions" below:



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**Memorandum of Agreement Standard Terms and Conditions  
Revised December 2019**

**1.00 Effective Date:**

All Memorandum of Agreements are not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the agreement and until the agreement has been submitted to the government contract review committee. However, in accordance with KRS 45A.700, memoranda of agreement in aggregate amounts of \$50,000 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 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.

**3.00 Cancellation clause:**

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 other party by registered or certified mail.

**4.00 Funding Out Provision:**

The state agency may terminate this agreement 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 agreement. The state agency shall provide the Contractor thirty (30) calendar day's written notice of termination of the agreement due to lack of available funding.

**5.00 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

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service contracts. If under such 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.

#### **6.00 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).

#### **7.00 Violation of tax and employment laws:**

KRS 45A.485 requires the Contractor and all subcontractors performing work under the agreement 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.

To comply with the provisions of KRS 45A.485, the Contractor and all subcontractors performing work under the agreement 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 agreement shall be in continuous compliance

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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 agreement shall be grounds for the Commonwealth's cancellation of the agreement and their disqualification from eligibility for future state contracts for a period of two (2) years.

[Check box section below need only be included for Contractors that are quasi-governmental entities or 501(c)3 non-profit entities.]

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.

#### **8.00 Discrimination:**

This section applies only to agreements 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 agreement, 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,

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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 thereto, and will permit access to his 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 agreement or with any of the said rules, regulations or orders, this agreement 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 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

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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.

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**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:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Date

**2nd Party:**

\_\_\_\_\_  
Signature

**Superintendent**  
\_\_\_\_\_

**Dr. Martin Pollio**  
\_\_\_\_\_

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Date

**Other Party:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Date

**Approved as to form and legality:**

\_\_\_\_\_  
EWDC Attorney

\_\_\_\_\_  
Date