Terms and Conditions for

MEMORANDUM OF AGREEMENT

Between

The Office of Vocational Rehabilitation, Education and Labor Cabinet

and

Marion County Schools

This Memorandum of Agreement ("MOA") is entered into, by and between the Office of Vocational Rehabilitation, Education and Labor Cabinet, Commonwealth of Kentucky ("OVR" or "the Commonwealth") and Marion County Schools as the Local Education Authority ("LEA") to establish an agreement for the Community Work Transition Program ("CWTP").

This MOA is effective from July 1, 2022, through June 30, 2023.

I. Scope of Services

The CWTP vocational rehabilitation ("VR") program is 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 sheltered work 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.

A. LEA shall:

1. Provide CWTP Transition Services, with the option to provide Pre-Employment Transition Services ("Pre-ETS") to students their first two years of high school (typically 9th and 10th grade), and transition services to students in their final two years of high school (typically 11th and 12th grade, but through grade 14).

2. In accordance with the Workforce Innovation and Opportunity Act ("WIOA") Section 113(A), provide Pre-ETS to only students with disabilities in need of such services who are "eligible" or "potentially eligible" for OVR services. Services shall not be provided until the LEA has received prior authorization and approval from OVR for the individual student.

3. Provide CWTP and Pre-ETS services with a Vocational Rehabilitation focus and in a manner that does not supplant any school-based instructional programs deemed the responsibility of the LEA through the Individuals with Disabilities Education Act ("IDEA").

4. Complete and submit a CWTP application to OVR and HDI expressing LEA's intent to participate in CWTP for the upcoming school year.

5. Hire an Employment Specialist ("ES"), who shall follow the requirements of the program, 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; and

   e. Knowledge of the OVR resources in the LEA's area, the partners, and the available programs for youth.

6. Ensure the ES attends the CWTP annual mandatory training provided by the University of Kentucky Human Development Institute ("HDI"). It is strongly encouraged that other school staff involved in the CWTP attend annual trainings as well (e.g., ES's direct supervisor). Through HDI's annual training, staff are appropriately trained on the most current, approved methods of service delivery as described in OVR's CWTP Policies & Procedure Manual. Invoices will not be accepted by OVR from LEA personnel who have not attended the annual mandatory training.

7. Ensure each CWTP ES identified on the annual CWTP application shall be allowed release time to attend mandatory scheduled trainings.

8. Refer students with disabilities, who have demonstrated the need for individualized transition services in accordance with their IEP, to OVR for the CWTP.

9. Utilize the Pre-VR System for data exchange of Student Information, including Referral Forms, Documentation of Disability, services provided, hours, group size, activity notes, and outcomes.

10. Complete a Comprehensive Vocational Assessment ("CVA") for students determined eligible for OVR services. The CVA shall be used to determine a student's unique strengths, resources, priorities, concerns and abilities, and interests as they relate to post-school activities and employment in order to

establish an appropriate vocational goal and future training needs. The report shall include information to describe the nature of ideal work tasks, co-workers, and work setting as well as student preferences and contributions.

11. Complete a Job Development/Job Coaching Planning Meeting to plan job development/job coaching activities for a student.

12. Provide Job Development/Job Coaching activities as determined appropriate for a student during the Job Development/Job Coaching Planning Meeting and according to the student's Individualized Plan for Employment ("IPE").

13. Ensure the ES provides individualized, weekly training for the expressed purpose of the student attaining employment prior to exiting high school.

14. Conduct an Exit Planning Meeting to define the steps to be taken after graduation/exit in order to ensure a student's successful transition to post-school activities and future employment needs. The ES shall ensure this meeting takes place by the final quarter of the student's last year of high school.

15. Once a student is working in a position that meets the guidelines and vocational goal of the student's IPE, submit to OVR a Job Placement Report, due the day after the student's high school exit. OVR will not issue payment for monthly progress notes after the Job Placement Report is submitted. The LEA is not eligible for job placement payment if the student does not attain employment prior to exiting high school.

16. Submit an Employment Follow-Up Report to OVR for a student as follows:

    a. 30-day report if the student maintains successful employment for 30 days, the LEA is eligible for payment for employment follow-up when a student maintains stable employment. Stable employment is considered: competitive integrated employment, where the student is satisfied with their employment, the employer is satisfied with the student and there is no risk of termination or write-up, the student has any needed extended services in place, has worked consistent hours, works for a secure business, and is in good standing with the employer for at least 30 days after exiting high school.

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

17. Ensure compliance with state and federal law, and requirements from the U.S. Department of Labor regarding student wages.

18. Ensure the completion and submission of all required documentation to OVR and, as described in OVR's Policies & Procedure Manual, verify the delivery of services. Required documentation shall include:

    a. Completed CWTP Referral Form;

    b. A copy of the student's IEP, 504 plan, or disability documentation;

    c. Monthly notes with an accurate accounting of services provided and supporting documents maintained (e.g., CWTP tracking sheets); and

    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 Report, Supported Employment Consultation Meeting Report (when applicable), Positive Personal Profile Report (when applicable), Family Interview Report (when applicable).

19. 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 shall 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.

20. Actively partner with HDI to attend additional trainings/meetings provided by HDI in order 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.

21. Demonstrate progress toward meeting the goals of support plans within the designated timetables. Should the support plans be unsuccessful, as defined by their individualized expectations, the LEA shall not be eligible to participate in the program for at least one (1) year.

22. Allow HDI access to provide individual program evaluations, program audits and technical support, as necessary.

23. Ensure the CWTP Annual Data Report regarding student, program outcomes and required statistical information is completed and submitted to HDI by the end of the school year.

24. Provide the ES 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 creation of work product, such as forms, resumes, applications, labor market research, etc.

25. Make a request for a service exception to the OVR VR Administrator prior to making a service exception for a student.

26. Provide quarterly student Infinite Campus grade/progress reports to OVR for eligible CWTP consumers/students. Grade/Progress Reports may be submitted directly to the OVR counselor.

27. Enter Pre-ETS activity documentation into the Pre-VR system, to include:

    a. Date that service occurred;

    b. Amount of time spent in direct service to the student;

    c. Which of the 5 required Pre-ETS were performed (i.e., Job Exploration Counseling, Work-Based Learning Experiences, Workplace Readiness Training, Instruction in Self-Advocacy, or Counseling on Opportunities for Enrollment in Postsecondary Education); and

    d. A progress note that specifies the activity performed within the required Pre-ETS.

28. Retain student documents and reports generated from the provision of CWTP services for a minimum of 3 years after this MOA ends and the final financial report is submitted or until all audit questions are resolved, whichever is later. (*See* Records section under the Additional Terms and Conditions.) Documents and reports include, but are not limited to: CWTP Referral Form, CVA Reports, Job Development/Job Coaching Planning Meeting Report, Job Development/ Job Coaching Reports, Job Placement Reports, Employment Follow-Up Reports, Exit Planning Meeting Reports, Supported Employment Consultation Meeting Reports, Pre-ETS activity reports.

B. OVR shall:

1. Pursuant to the rates set forth in the Invoicing section of this MOA, provide fee-for-service reimbursement to the LEA for CWTP Pre-ETS and Transition Services provided by the LEA.

2. Review student referrals, IEP, 504 plan and/or disability documentation to determine if a student is "potentially eligible" for Pre-ETS prior to the start of Pre-ETS provision. Review IEP, 504 plan and/or disability documentation to determine eligibility for other OVR services (i.e., CWTP Transition Services).

3. Review invoices 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.

4. Pre-authorize all CWTP services, as OVR determines necessary, through the OVR Case Management System ("CMS") or Pre-VR system, as services are needed.

5. Have the final decision on whether a student may continue in CWTP and/or what services are appropriate.

6. Assure the student is in receipt of career counseling and information, 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.

7. Ensure all applicable OVR policies and procedures are maintained statewide.

8. Ensure all parties involved with CWTP are appropriately trained and provided with support from OVR and HDI as needed.

9. Review CWTP mandatory training components on a yearly basis.

10. Provide guidance and technical assistance to LEA.

11. Ensure LEA expenditures are appropriate, solely for OVR consumers and deemed appropriate for the program.

12. Assign a minimum of one (1) VR Counselor to each LEA participating in the CWTP. The VR Counselor shall provide guidance to the ES on developing an appropriate unique goal each student participating in the program. The VR Counselor shall authorize approved services and maintain all supporting documentation received and approved prior to payment of requested funds. In the event that the VR Counselor position assigned to the LEA becomes vacant, the VR local manager or a designee, in coordination with the VR Assistant assigned to the CWTP, shall continue the program until the VR Counselor position is filled.

13. Meet with "eligible" students, parents/guardians, the ES and/or involved staff on a regular basis and as needed to effectively plan and implement a successful CWTP transition program.

14. 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.

15. Ensure VR Counselors use the CVA report to determine a student's vocational goal when writing or amending the IPE.

16. Ensure VR Counselors attend the Job Development/Job Coaching Planning Meeting to plan unique, vocationally relevant activities for students.

17. Ensure VR Counselors refer students for supported employment, as appropriate based on student need, by at least the third quarter (Q3) of students' senior year (12th grade) or year of exit.

18. Develop IPEs for students, when appropriate, noting the need for CWTP transition services, and provide services in accordance with IPEs.

19. Ensure VR Counselors amend IPEs, as needed during students' exit planning meetings, to more clearly identify services required for attaining a successful transition and employment outcome.

20. Review required documentation of approved services which are provided by the LEA and pay the LEA at the established rate, per Invoicing section below, within 30 days of receiving satisfactorily documented services, as determined by the VR Counselor.

21. Monitor program expenditures by VR Counselors for services approved under this MOA.

22. Ensure assigned VR Counselors attend CWTP trainings provided by HDI.

23. Review the need for and ensure the provision of assistive technology when students are in an employment setting, when applicable.

24. Provide Social Security Benefits Planning, when applicable.

25. Refer for adult services, such as independent living, when applicable.

II. Invoicing

A. Pre-ETS Authorizations and Reporting

LEA shall not begin services prior to student approval in the Pre-VR System. Services provided without prior approval will not be paid. OVR shall pre-authorize on a yearly basis for each student and pay the LEA the following for Pre-Employment Transition Services provided.

Fees:

a. One (1) student billed at $72.00 per hour.

b. Two (2) students are billed at a $38.88 (per student) hourly rate for a total of $77.76 per hour.

c. Three (3) students are billed at a $29.52 (per student) hourly rate for a total of $88.56 per hour.

d. Four (4) students are billed at a $23.76 (per student) hourly rate for a total of $95.04 per hour.

e. Five (5) to ten (10) students are billed at the base rate per hour with a total of $110.00 per hour.

f. Eleven (11) to twenty (20) students are billed at the base rate per hour with a total of $150.00 per hour.

g. Twenty-one (21) or more students require an exception request to be sent to and approved by the OVR Transition Services Branch Manager prior to provision of services. Groups of students with disabilities should be kept small to ensure students have the support they need in order to participate in services. However, there may be occasions where it is appropriate groups larger than twenty (20) to participate in a Pre-ETS. The LEA shall seek written approval from OVR prior to conducting group activities with more than twenty (20) students. All such proposals must ensure that all grant costs are necessary reasonable, allocable, and allowable under state and federal law.

Reporting:

a. LEA will submit service hours, activity notes and outcomes through the Pre-VR System by the 5th of the following month. Service hours cannot be entered after the 5th. Example: Service hours provided in September are required by the 5th of October.

b. Pre-ETS Coordinators will review hours, activity notes and outcomes by the 15th of the month. Example: Services provided in September, submitted by the 5th of October, will be reviewed by the 15th of October. NOTE: If activity notes and/or outcomes are insufficient, Coordinator may request additional information or not approve service hours.

c. Approved services will appear on the Approved Services reports in the Pre-VR system after the 15th of each month.

Invoicing:

a. Provider shall use the Approved Services reports to create invoices, which shall be submitted to OVR by the last day of the month. Invoices and supporting documentation/reports shall be emailed to OVRInvoices@ky.gov. Example:

Services provided in September, approved in October, shall be invoiced by October 31st. Billing shall be submitted in 15-minute increments (e.g., .25, .50, .75, 1.00, etc.).

b. If no reimbursement is required during a specific month, the LEA shall send email notification to Beth.McDaniel@ky.gov stating no reimbursement is requested for said month.

c. Invoices shall contain the following elements legibly printed on the invoice:

1. LEA name and address;
2. Reference to OVR (e.g., "Bill for: OVR");
3. Unique Invoice Number;
4. Invoice Date;
5. Dates of service in which services were provided (e.g., "September invoice Dates of Service 09/01/2022-09/30/2022");
6. Description of services provided; (e.g., Self-Advocacy, Job Exploration, etc.);
7. Invoice breakdown, per line item (e.g., "2.00 hours, Self-Advocacy"); and
8. Invoice total.

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 shall result in reduction or denial of claim voucher. The LEA shall be required to submit a corrected claim within ten (10) calendar days. OVR shall document and provide specific issues in writing to the LEA.

B. Transition Services Authorizations and Reporting

CWTP Transition Services shall not be provided until the LEA has received prior authorization via an OVR Authorization Form. OVR will pre-authorize all Transition Services determined to be necessary through the OVR Case Management System. Transition Services will be authorized on a quarterly basis.

The LEA shall provide reports associated with the corresponding services that are provided:

a. Comprehensive Vocational Assessment: in accordance with the review and submission process in the CWTP Policy & Procedure Manual, the CVA Report and invoice shall be submitted upon completion, within the quarter authorized. This service fee shall be billed at $1,200.00 per approved CVA Report.

b. Positive Personal Profile Report: in accordance with the review and submission process in the CWTP Policy & Procedure Manual, the report and invoice shall be submitted upon completion, within the quarter authorized. This service fee shall be billed at $100.00 per approved Positive Personal Profile Report.

c. Family Interview Report: in accordance with the review and submission process in the CWTP Policy & Procedure Manual, the report and invoice shall be submitted upon completion, within the quarter authorized. This service fee shall be billed at $100.00 per approved Family Interview Report.

d. Job Development/Job Coaching Planning Meeting Report: in accordance with the review and submission process in the CWTP Policy & Procedure Manual, the report and invoice shall be submitted upon completion, within the quarter authorized. This service fee shall be billed at $300.00 per approved Job Development/Job Coaching Planning Meeting Report.

e. Monthly Job Development/Job Coaching Report: Job Development Job Coaching monthly reports for Transition Services are due by the 5th of the month following provided services. Monthly Reports include Job Development/Job Coaching activity. Services shall be completed within the quarter authorized. In accordance with the review and submission process in the CWTP Policy and Procedure Manual, monthly reports shall be submitted on or before the 5th of the month following provided services. Invoices shall be submitted on or before the 5th of the month following the quarter. This service fee is billed at $40.00 per hour, with a maximum of 30 hours billable per quarter.

f. Supported Employment Consultation Meeting Report: in accordance with the review and submission process in the CWTP Policy & Procedure Manual, the report and invoice shall be submitted upon completion, within the quarter authorized. This service fee shall be billed at $300.00 per approved Supported Employment Consultation Meeting Report.

g. Exit Planning Meeting Report: in accordance with the review and submission process in the CWTP Policy & Procedure Manual, the report and invoice shall be submitted upon completion, within the quarter authorized. This service fee shall be billed at $300.00 per approved Exit Planning Meeting Report.

h. Job Placement Report: in accordance with the review and submission process in the CWTP Policy & Procedure Manual, the report and invoice shall be submitted upon completion, within the quarter authorized. This service fee shall be billed at $1,500.00 approved Job Placement Report.

i. Employment Follow-Up Report: in accordance with the review and submission process in the CWTP Policy & Procedure Manual, the report and invoice shall be submitted as soon the 30 days of follow-up services are completed. This service fee shall be billed at $200.00 per approved Employment Follow-Up Report.

III. Monitoring

Per 2 CFR 200.329, OVR shall monitor the performance of the Contractor as necessary and in accordance with regulations to ensure Contractor compliance with all the requirements of this MOA, including timeframes and performance goals.

A. Audit

OVR will conduct periodic unannounced and announced programmatic and administrative monitoring to assess the Contractor's compliance with this MOA and any applicable federal and state laws, and agency policies and procedures. The Contractor shall permit persons duly authorized by OVR to inspect any, but not limited to:

1. Records;
2. Documents (Physical and Electronic);
3. Facilities; and
4. Inventory.

OVR may also interview any clients and employees of the Contractor under such conditions as OVR deems appropriate.

B. Documentation Review

Contractor must supply any document required by or referenced in and consistent with this MOA in either paper or electronic form, and any such version shall be sufficient for all purposes under this MOA.

C. Risk Assessment

During the term of this MOA, the Contractor agrees to provide documents and information to facilitate OVR's monitoring risk assessment process. The Contractor further agrees to comply with the requirements, requests, and results of OVR's risk assessment, including participation in monitoring events. Failure to comply with this may result in termination of the MOA.

IV. COVID-19 Terms

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

1. Substantive services must continue to be provided to consumers.

2. In order for services to be reimbursed by the Commonwealth, substantive services must be rendered by the Contractor

3. The Contractor may implement accessible training activities using a computer-based training platform that allows for face-to-face interaction. As part of this process, the Contractor must ensure the consumer's ability to actively participate in computer-based training, including identifying whether the customer has the computer resources available.

4. Prior to providing services on a remote basis to OVR consumers, the Contractor must submit a plan of service, detailing the proposed methods of providing remote services, to the OVR Program Administrator.

5. The Contractor must have OVR's written approval of the proposed plan of service prior to implementation of remote services.

V. Additional 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 on the basis of 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 Contractor as set forth below:

a. For performance of the services specified herein, OVR agrees to pay Contractor pursuant to the terms set forth in the Budget.
b. The schedule of payment to the Contractor shall be as set forth above, on actual services rendered and sent to OVR 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
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 Contractor 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, Contractor'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 Contractor, 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 Contractor shall be immediately forwarded to the OVR's principal representative.

All parties agree that any consumer information disclosed by OVR to the Contractor 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. Contractor shall hold any Protected Health Information strictly confidential and, if applicable, comply with all law governing the use and disclosure of such information as relating to the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

a. Notification
   Contractor 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 Contractor or its agents in any way except as authorized by this Agreement or approved in writing by the Commonwealth. Contractor shall provide and maintain a secure environment that ensures confidentiality of all OVR records and other confidential information wherever located. Contractor shall comply with KRS 61.931-934 and is required thereunder to implement, maintain, and update security and breach investigation procedures appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices referenced in KRS 61.932(1)(b), and that are reasonably designed to protect the personal information from unauthorized access, use, modification, disclosure, manipulation, or destruction. In the event Contractor suffers a security breach relating to the personal information in its possession, Contractor shall notify OVR pursuant to KRS 61.932(2)(b), and Contractor shall be responsible for the costs of the notification and investigation required under KRS 61.933.

5. Fiscal Controls

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

i. The amount and disposition by the Contractor 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; and,
v. How the Contractor 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 Contractor shall comply with all applicable state and federal laws, regulations, and policies regarding conflicts of interest. The Contractor shall immediately disclose to OVR any conflict of interest that it become aware of.

b. The Contractor shall include the substance of this Section in all subcontracts.

8. **Audit**

a. The Contractor 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 Contractor 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 Contractor 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 Contractor expends $750,000 or more in Federal awards in its fiscal year, the Contractor 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 Contractor 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 Contractor of such noncompliance.

g. If the Contractor is subject to Single Audit requirements, the Contractor 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 Contractor's fiscal year.

9. Subcontracting

The Contractor 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 Contractor agrees that all requirements of the Agreement shall also be applicable to Subcontractors and that the subcontractors shall be required to report to the Contractor in a manner that will meet the Contractor's reporting requirements to OVR. In no event shall any provision of this Section be construed as relieving the Contractor of the responsibility for ensuring that the performances rendered under all subcontracts comply with all of this Agreement's terms as if the Contractor rendered such performances rendered.

10. Erroneous Payments

At the Commonwealth's sole discretion, payments made to Contractor in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Contractor, may be recovered from Contractor by deduction from subsequent payments under this Agreement or other grants or agreements between the Commonwealth and Contractor 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 Contractor 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 Contractor 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 Contractor to exercise any available appeal rights.

a. <u>Termination for Cause and/or Breach</u>

If Contractor 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 Contractor of such non-performance in accordance with the provisions herein. If Contractor 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. Contractor shall continue performance of this Agreement to the extent not terminated, if any.

b. <u>Obligations and Rights</u>

To the extent specified in any termination notice, Contractor 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, Contractor 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, Contractor shall assign to the Commonwealth all of Contractor's right, title, and interest under such terminated orders or sub-Grants. Upon termination, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the Commonwealth has an interest. All materials owned by the Commonwealth in the possession of Contractor shall be immediately returned to the Commonwealth. All work product, at the option of the Commonwealth, shall be delivered by Contractor to the Commonwealth and shall become the Commonwealth's property.

c. Payments
The Commonwealth shall reimburse Contractor 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 Contractor's performance with respect to all or any portion of this Agreement pending necessary corrective action as specified by the Commonwealth without entitling Contractor to an adjustment in price/cost or performance schedule. Contractor 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 Contractor 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 Contractor'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 Contractor'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 Contractor infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Agreement, Contractor shall, at the Commonwealth's option:

a. Obtain for the Commonwealth or Contractor 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 Contractor 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 Contractor 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 7 4-99;
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 Contractor 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 Contractor 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 Contractor 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

Contractor'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 Contractor, or the Commonwealth are subject to all of the provisions of this Agreement. Contractor 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 Contractor 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 Contractor 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 Contractor 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

Contractor 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

Contractor 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.

Contractor 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. Contractor 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 Contractor performing Services under this Agreement shall hold all required licenses or certifications, if any, to perform their responsibilities. Contractor, 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 Contractor to properly perform the terms of this Agreement shall be deemed to be a material breach by Contractor and constitute grounds for termination of this Agreement.

26. Reporting Requirements

The Contractor shall comply with the following reporting requirements:

a. **Performance and Progress**

Contractor 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 Contractor 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 Contractor's progress in meetings its stated goals and objectives. After the project is completed, Contractor 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 Contractor 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 Contractor's ability to perform its obligations hereunder, Contractor 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**

Contractor'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 Contractor assures and guarantees that the Contractor 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 Contractor has obligated itself to perform pursuant to this Agreement.

b. **Authorized Representative**

The person or persons signing and executing this Agreement on the Contractor's behalf do warrant and guarantee that he, she, or they have been duly authorized by the Contractor to execute this Agreement on the Contractor's behalf and to validly and legally bind the Contractor to all contractual terms, performances, and provisions. If requested, the Contractor 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 Contractor 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 Contractor 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 Contractor certifies that it will disclose to OVR in a timely manner in writing all offenses enumerated in this certification.

29. Attorney Fees

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:

Signature: ______________________________ **Date:** ______

Executive Director, Office of Vocational Rehabilitation

Signature: ______________________________ **Date:** ______

Superintendent, Local Education Authority