



Commonwealth of Kentucky

CONTRACT

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Memorandum of Agreement

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TODD COUNTY BOARD OF EDUCATION

205 AIRPORT ROAD

ELKTON KY 42220

Vendor No.

KY0035888

Vendor ContactName: Preston Browning
Phone: 270-265-2436
Email: preston.browning@todd.kyschools.us

Effective From: 07/01/2023

Effective To: 06/30/2024

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
1		0.00000		DAY TREATMENT PROGRAM	\$0.000000	\$73,710.00	\$73,710.00

Extended Description:

This contract is to provide a day treatment program/services for school-age juveniles in Todd County. The Department is unable to provide funding and operate all the day treatment programs across the state. This commodity line is for FY'24

Shipping Information:	Billing Information:
DJJ - Fiscal Branch 1025 Capital Center Drive Bldg #3 - 3rd Floor Frankfort KY 40601	DJJ - Fiscal Branch 1025 Capital Center Drive Bldg #3 - 3rd Floor Frankfort KY 40601

TOTAL CONTRACT AMOUNT:	\$73,710.00
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Memorandum of Agreement Template

Revised January 2023

This Memorandum of Agreement (MOA) is entered into, by and between the Commonwealth of Kentucky, Justice and Public Safety Cabinet, Department of Juvenile Justice (“the Commonwealth”) and Todd County Board of Education (“the Contractor”) to establish an agreement for Day Treatment Services. The initial MOA is effective from July 1, 2023, through June 30, 2024.

Scope of Services:

I. Definitions:

For the purposes of this MOA, the definitions listed in this section shall represent the common and exclusive understanding of the parties hereto. The singular and plural form, as well as the small or upper case, of any defined term can be used interchangeably regardless of whether the definition refers to the singular or plural term, or uses the small or upper case, and pronouns shall be deemed to include all genders.

1. “Commonwealth data” means any data or information, regardless of form or characteristic, including but not limited to information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual, collected or obtained by the Contractor pursuant to this MOA.
2. “Contractor employee” means an agent, employee, subcontractor, vendor, volunteer, or any other individual or entity acting on behalf of the Contractor that provides services pursuant to this MOA.
3. “Department” means the Department of Juvenile Justice.
4. “PREA” means the Prison Rape Elimination Act, 34 U.S.C.A. § 30301, et seq., (formerly cited as 42 U.S.C. §15601, et seq.).
5. “Remote services” means services provided pursuant to this MOA that are delivered by remote communications technology including but not limited to the internet, interactive and non-interactive web-based communication, telephone, and audio-visual recordings, for the purpose of delivering and/or receiving services and information while a student and the Contractor are at different locations.

II. Materials Incorporated by Reference

1. Department of Juvenile Justice’s Program Application

III. Department Terms and Conditions

- A. The Commonwealth may

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1. Monitor and conduct a service/program audit of the activities of the Contractor and its programs performed pursuant to this contract at times mutually convenient to both parties.
 - 1.1. The Commonwealth's Program Services Division may perform a monitoring of each contracted day treatment program at a minimum of twice a year, providing the Contractor all monitoring tools for prior review and clarification.
 - 1.2. Technical assistance will be available to the Contractor upon request.
2. Conduct periodic desk audits of the Contractor to assess the progress towards completion of the goals and objectives as deemed necessary by the Commonwealth.
3. Offer training opportunities at no cost for the actual training, but all costs for lodging, travel and meals shall be at the expense of the Contractor.
 - 3.1. The Commonwealth reserves the right to provide training by means of remote communications technology.
4. Notify the Contractor designee of any grievance involving the Contractor educational staff.
 - 4.1. Contractor shall resolve the dispute according to their respective policy and procedures.
 - 4.2. If a dispute is not resolved within a timely manner the following method shall be used:
 - 4.2.1. The local Juvenile Services District Supervisor or Commonwealth facility Superintendent and the Contractor Program Director will meet to discuss, clarify, and resolve the matter.
 - 4.2.1.1 If the matter cannot be resolved, it will then be referred to the local Community Services Regional Manager or Facilities Regional Administrator.
 - 4.2.2. The local Community Services Regional Manager or the Facilities Regional Administrator will meet with the Contractor Program Director to discuss, clarify, and resolve the matter.
 - 4.2.2.1 If the matter cannot be resolved, it will be referred in written form to the Education Branch Manager.
 - 4.2.3. The Education Branch Manager and the Contractor Superintendent of the school will meet to discuss, clarify, and resolve the matter.
 - 4.2.3.1 If the matter cannot be resolved, it will then be referred in written form to the Commonwealth's Program Services Division.
 - 4.2.4. The Commonwealth's Program Service Division and the Contractor's Superintendent will meet within twenty (20) working days or receipt of the notice.
 - 4.2.4.1 They will review the material, discuss it with the individuals they deem appropriate and reach a resolution.

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4.2.4.2 This resolution will then be formalized in writing and conveyed to the Commonwealth and the Contractor Program Director.

5. Notify the Contractor by Certified Mail, Return Receipt Requested, if a request for transfer of all equipment and/or supplies is necessary.
6. Require the Contractor to implement applicable federal, state, and local requirements and advisories pertaining to any pandemic that occurs during the contract period when providing services pursuant to this MOA.
7. Authorize the Contractor to perform remote services pursuant to this MOA as needed to comply with applicable federal, state, and local requirements and advisories pertaining to the COVID-19 pandemic.

B. The Contractor shall:

1. Perform the functions described with particularity in the Department of Juvenile Justice's Program Application ("Program Application"), on file with the Education Branch of the Department, within the actual budgetary limitations for the term of this Agreement.
2. Complete the goals and objectives as set forth in the Program Application within the specifically allotted time frames.
3. Review service delivery goals, objectives, and expenditures and submit to the Commonwealth program reports and expenditures on a monthly basis.
 - 3.1. Funds obligated under this agreement will be available for the provision of services by an agency, organization, or individual other than the Contractor only after the Contractor has executed a written subcontract in accordance with the provisions of this MOA.
 - 3.2. Except for subcontracts, which are specifically identified in the approved plan, the Contractor shall not subcontract any responsibilities described herein without prior written approval of the Commonwealth, subject to such additional conditions and provisions as the Commonwealth deems necessary.
4. Provide a minimum of 210 instructional/direct service days during each fiscal year of the contract.
5. Provide a school calendar that identifies local school district instructional days, instructional/direct service days beyond the local school district calendar, professional development days, holidays, vacation days and non-instructional days.
6. Provide a daily program schedule for the local school district calendar.
7. Provide a minimum of four (4) hours of instructional/treatment time per day for each day beyond the local school district calendar.
8. Provide a daily program schedule for instructional/direct service days beyond the local school district calendar.
9. Provide counseling for all students in the program according to the following guidelines:

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- 9.1. Counseling shall be provided by persons with a minimum qualification of a bachelor's degree in social work, Psychology, or a Human Service related field;
- 9.2. Individual treatment ratio of one counselor per ten (10) youths or one (1) counselor and an aide per up to fifteen youths based on rated capacity;
- 9.3. Individual counseling of one (1) scheduled hour per week per youth;
- 9.4. Group counseling of two (2) scheduled 1-hour sessions per week per youth with a maximum of twelve (12) youth per group session;
- 9.5. Family counseling if indicated on the student's Individual Treatment Plan (ITP); and
- 9.6. Documentation, including dates of counseling sessions, shall be made on the Commonwealth's Weekly Treatment Team Summary Form.
10. Provide a yearly organizational chart including lines of supervision, positions, names and titles.
11. Provide a report on the results to date, at the end of each fiscal year.
12. Provide a two-year fiscal budget summary.
13. Maintain and ensure the confidentiality of all information between the Contractor and the Commonwealth, whether written or verbal, provided by or about any youth seeking or receiving services under this contract, except as approved and authorized in writing by the youth, or as otherwise authorized by the law.
14. Maintain records to document the total operation of the Contractor pursuant to this contract and submit monthly program reports and expenditures by the 15th of every month on the forms prescribed by the Commonwealth.
 - 14.1. The monthly report shall contain a roster of daily student attendance which shall include age, gender, and race of each student.
 - 14.2. The Commonwealth shall have the right to deny payment for any report not submitted in accordance with this provision.
15. Retain all program and financial records for a period not less than (5) five years after all matters pertaining to this contract (i.e., program audit, settlement of audit exceptions, disputes) are resolved in accordance with applicable state laws and regulations and policies.
16. Maintain records sufficient to identify the results of the service provided each to individual and for use in evaluating the effectiveness of the total program, including but not limited to:
 - 16.1. an accurate count of student average daily attendance
 - 16.2. administering pre- and post-tests to each student for evaluation purposes per the Individual Treatment Plan (ITP); and
 - 16.2.1. In the event tests are not administered, the Contractor shall document reasons for this.
 - 16.3. Responding to the Commonwealth's specific requests for information.

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17. Upon request by the Commonwealth, submit a status report on the program's goals and objectives and the critical incident report summary.
18. Submit by the 5th of each month a complete, accurate and cumulative Monthly Medicaid Report for the current fiscal year.
19. Permit Commonwealth employees and agents to monitor and evaluate services being performed.
20. Submit all records and documentation of service provision regarding contracted and subcontracted services to the Commonwealth when requested for monitoring purposes.
21. Respond to monitoring, fiscal, and/or program exceptions established by evaluation monitoring and/or audit of this MOA, and promptly settle any monitoring, fiscal, and/or program audit exceptions by making direct payment, or reduction of future reimbursement, or by other methods approved by the Commonwealth.
22. Respond to a Statement of Deficiencies submitted by the Commonwealth by submission of and compliance to a Plan of Correction based on monitoring results.
23. Permit the Commonwealth or auditing firm selected by the Commonwealth to audit the fiscal records of the Contractor in the format established by the Commonwealth and be responsible for fiscal and program exceptions established by audit of this contract, and promptly settle any audit exceptions by methods approved by the Commonwealth.
24. Assure that a Fidelity Bond has been properly executed to ensure that the employee(s) who are authorized to receive or deposit funds, issue financial documents, or issue checks or other instruments of payment for program costs shall be bonded against loss of sufficient amounts of funds. The bond should be sufficient to cover maximum sums handled monthly under this contract, and a copy shall be submitted to the Commonwealth upon request.
25. Provide the Commonwealth with a current electronic copy of the Contractor's Standard Operating Procedures ("SOP") manual.
 - 25.1. This manual and all subsequent changes must be received and approved by the Commonwealth before procedures are implemented.
26. Review and update Contractor's SOP annually.
27. Document within each employee's training file that they have read and understand the contents of the Contractor's SOP Manual annually.
28. Maintain adequate and competent staff necessary to provide the services described herein, with proper supervision and in conformity with existing standards of the Commonwealth for provision of these services.
29. Maintain training records including initial and on-going training, as well as an annual training plan for each staff based upon position/duties.
30. Develop yearly Facility Training Plans for all staff that include, but is not limited to:

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- 30.1. Physical Skills Review(s);
- 30.2. Emergency Procedures/Fire Safety;
- 30.3. Bloodborne/ Airborne Pathogens;
- 30.4. Suicide Signs and Symptoms;
- 30.5. review of new or revised SOP; and
- 30.6. Any other training deemed necessary by the Contractor or the Commonwealth.
- 31. Provide and/or secure appropriate orientation and in-service training for staff responsible for the services delivered under this contract.
- 32. Upon request, assist the Commonwealth in training involving contracted services and related agency skills and resources.
- 33. Comply with all state licensing requirements and standards for all contract services.
- 34. Ensure that youths aggrieved by actions rising from service rendered under this MOA shall have the right to file a grievance with the possibility of a hearing.
 - 34.1. The Contractor is responsible for setting up procedures to deal with grievances.
- 35. Ensure no employee or representative of the Contractor with procurement authority shall participate either directly or indirectly in any activities that are in conflict with the provisions stated in KRS 45A.455 Conflict of Interest – Gratuities and Kickbacks – Use of Confidential Information.
- 36. Acknowledge that the Contractor is responsible for fulfillment of the terms of this MOA with the Commonwealth whether or not subcontractors are used.
- 37. Transfer all items of equipment and or supplies to a new provider, if a new provider is selected as a result of competition, or if the contract is terminated by the Contractor or the Commonwealth and a new provider is secured.
 - 37.1. In the event of termination of the contract or the selection of a new provider, the transfer shall be made within 30 days from the date of receipt of notice from the Commonwealth, such notice to be by Certified Mail, Return Receipt Requested.
- 38. Ensure that all equipment purchased or leased under this contract having a unit acquisition value of \$500 or more and with a useful life of more than 1 year, remain the property of the Commonwealth.
 - 38.1. All property is subject to an inventory and the Contractor is responsible for keeping an up to date and accurate inventory list on equipment that is purchased with the Commonwealth funds and has an acquisition value of \$500 or more.
- 39. Ensure that a monthly staff meeting is held and that documentation includes agenda, roster, time and place of meeting.

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40. Develop policies and procedures incorporated into programming that promote a zero tolerance environment against sexual abuse, sexual harassment, sexual contact or any type of sexual offense.
41. Submit documentation regarding Contractor's zero tolerance environment policies to the Commonwealth.
42. Comply with PREA, all applicable PREA National Standards (28 C.F.R. Part 115), which can also be found at <https://www.prearesourcecenter.org>, and all applicable Commonwealth's policies related to PREA which can be found at <https://djj.ky.gov/Policy%20Manual/Pages/default.aspx>.
 - 42.1. If the Contractor's facility is a treatment center governed by federal confidentiality laws and regulations that prohibit the release of residents' identifying information, upon intake of a resident, the Contractor shall request that the resident sign a written consent form that authorizes facility personnel to release the resident's identifying information in response to a request from a Commonwealth employee or the Commonwealth's Internal Investigations Branch conducting an administrative PREA investigation at the facility regarding an allegation of sexual abuse or harassment.
 - 42.2. Failure to comply with PREA standards and related Department policies may result in termination of this Agreement.
43. Self-monitor its activities and facilities for compliance with PREA standards and Commonwealth policies.
 - 43.1. The Commonwealth may conduct announced or unannounced compliance monitoring that may include on-site monitoring visits.
44. Be subject to a U.S. Department of Justice (DOJ) PREA audit per the DOJ audit cycle if the Contractor provides residential services for youth and 50% of the Contractor's population is youth committed to the Commonwealth.
45. Be responsible for all costs associated with any PREA audits.
46. Contractor shall procure and maintain in effect during the term of this Agreement all permits, certifications, insurance, and licenses required by law for the performance of the work to be performed pursuant to this Agreement.
47. Contractor shall require all Contractor employees to comply with all applicable provisions of this Agreement.
48. The Contractor shall comply with all applicable Commonwealth Office of Technology policies and procedures, including but not limited to:
 - 48.1. Kentucky Information Technology Standards (KITS) (<http://technology.ky.gov/Governance/Pages/KITS.aspx>);
 - 48.2. Enterprise Security Policies (<http://technology.ky.gov/ciso/Pages/InformationSecurityPolicies,StandardsandProcedures.aspx>);
 - 48.3. Enterprise Policies (<http://technology.ky.gov/policy/pages/policies.aspx>); and
 - 48.4. Enterprise IT Policies (<https://finance.ky.gov/Pages/index.aspx>)

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C. The Contractor may

1. Request an amendment as needed to adjust the service delivery goals and objectives.

Pricing:

The Commonwealth shall

1. Reimburse the Contractor for day treatment services pursuant to this MOA in compliance with the approved application on file. The total value of this MOA shall not exceed \$73,710.00 per fiscal year.

The Contractor shall

1. Not allow or authorize Contractor personnel to financially obligate Commonwealth funds.
2. Bill the Commonwealth for goods and services tendered and rendered from the first to last day of each calendar month and provide any and all supporting documentation used to constitute the invoice.
 - 2.1. Supporting documentation shall include salary statements and operating expenditure receipts.
 - 2.2. The documentation must be detailed and contain copies of actual receipts.
3. Provide any and all invoices to the Commonwealth no later than the 15th of each month except for June. The June invoice is due by July 5.
4. Provide any and all supplemental supporting documentation and invoice corrections discovered through self-auditing no later than 60 days after the end of the billing period.
5. Provide any and all supplemental supporting documentation and invoice corrections upon receipt of notice of deficiency from the Commonwealth no later than 90 days after the end of the billing.
6. Send any and all electronic and physical invoices to the following addresses:
 Department of Juvenile Justice
 Attn: Azurdee Garland
 1025 Capital Center Drive, 3rd Floor
 Frankfort, KY 40601
 Email: azurdeem.garland@ky.gov

JUSTICE AND PUBLIC SAFETY CABINET TERMS AND CONDITIONS

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1. Contractor shall comply at all times with all applicable federal, state, and local laws, regulations, executive orders, and attorney general opinions.
2. Contractor shall comply with all applicable Commonwealth of Kentucky Executive Department policies and procedures, and Commonwealth Office of Technology policies and procedures.
3. Contractor shall report any and all acts and omissions constituting a violation of applicable federal, state, or local laws, policies and procedures, or this Agreement, to the Commonwealth in writing within one (1) business day of the discovery of the violation.
4. To the extent permitted by law, Contractor agrees to indemnify and hold harmless the Commonwealth against any and all claims, losses, demands, obligations, and litigation, including attorneys' fees, that result from or by: (1) goods tendered and services rendered by the Contractor in connection with performance of this Agreement; (2) any and all bad-faith, erroneous, negligent, reckless, and unlawful acts and omissions of the Contractor, its officers, or employees in the performance of this Agreement; (3) the Contractor's creation of a hazardous condition or exacerbation of a pre-existing hazardous condition; (4) the Contractor's publication, translation, reproduction, delivery, performance, use, or disposition, of any data processed under the contract in a manner not authorized by the contract, or by federal or Commonwealth regulations or statutes (5) the Contractor's employment practices during the term of this Agreement; and (6) any failure of the Contractor, its officers, or employees to observe federal, state, and local laws, including but not limited to labor laws and minimum wage laws.
5. Both parties, including any subcontractors or agents of each, agree to comply with all applicable state and federal confidentiality laws, including the Family Educational Rights and Privacy Act and the Health Insurance Portability and Accountability Act, and to protect the security, confidentiality, and integrity of education and health information. The Contractor acknowledges and agrees that the Commonwealth shall be entitled, without waiving any other rights or remedies, to injunctive or equitable relief to enforce the requirements of this provision of this Agreement.
6. Vendors and other state agencies that receive Personal Information as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq. ("the Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set for in the Act.
 - 6.1. "Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:
 - 6.1.1. An account, credit card number, or debit card number that, in combination with any required security code, access code, or password, would permit access to an account;
 - 6.1.2. A Social Security number;
 - 6.1.3. A taxpayer identification number that incorporates a Social Security number;

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- 6.1.4. A driver's license number, state identification card number, or other individual identification number issued by an agency;
- 6.1.5. A passport number or other identification number issued by the United States government; or
- 6.1.6. Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec. 1232g.
- 6.2. As provided in KRS 61.931(5), a "non-affiliated third party" means "any person or entity that has a contract or agreement with the Commonwealth and receives (accesses, collects, or maintains) personal information from the Commonwealth pursuant to the contract or agreement."
- 6.3. Contractor agrees to cooperate with the Commonwealth in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.
- 6.4. Contractor shall notify as soon as possible, but not to exceed seventy-two (72) hours, the Commonwealth, the Commissioner of the Kentucky State Police, the Auditor of Public Accounts, and the Commonwealth Office of Technology, of a determination of, or knowledge of, a breach, unless the exception set forth in KRS 61.932(2) applies and the Contractor abides by the requirements set for in that exception. Notification shall be in writing on a form developed by the Commonwealth Office of Technology
- 6.5. Contractor agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.
- 6.6. Upon conclusion of an investigation of a security breach of Personal Information as required by KRS 61.933, Contractor agrees to pay the costs of the notification, investigation, and mitigation of the security breach.
- 6.7. In accordance with KRS 61.932(2)(a), Contractor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth Office of Technology.
- 7. Contractor agrees that it will not distribute, divulge, publish, or release any data or information obtained from or owned by the Commonwealth without the prior written approval of the Commonwealth unless compelled to do so by law or by a judicially signed order from a court of competent jurisdiction. Contractor acknowledges that it receives the Commonwealth's data or information solely for the purposes of this Agreement, and that its receipt of the Commonwealth's data or information in no way creates any ownership interest in the Commonwealth's data or information, unless explicitly provided otherwise within the terms and conditions of this Agreement.
- 8. Contractor shall ensure that any and all access to Commonwealth data by Contractor personnel is limited to only those Contractor personnel with a necessary and essential purpose to fulfill the terms and conditions within this Agreement.

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9. Contractor shall not utilize Commonwealth data for the Contractor's benefit except as contemplated within and pursuant to the terms and conditions of this Agreement. The Contractor shall not sell or resell any and all Commonwealth data.
10. Contractor shall ensure that any and all data transmitted and received on behalf of and as directed by the Commonwealth is transmitted and received only via secure methods and protocols.
11. Upon the expiration of the term of this Agreement, unless it is renewed prior to its expiration, Contractor shall either: (1) return any and all data provided by the Commonwealth, destroy any and all copies of the data in whatever form they occur, complete the attached Data Destruction Certification, and submit the certificate to the Commonwealth no less than 7 calendar days after expiration of this Agreement; (2) destroy the data, including any and all copies of the data in whatever form they occur, without returning the data to the Commonwealth, complete the attached Data Destruction Certification, and submit the certificate to the Commonwealth no less than 7 calendar days after expiration of this Agreement; or (3) retain the data subject to the terms of this Agreement regarding data ownership, privacy, and breach. The Commonwealth retains discretion to choose the option Contractor shall perform. In the event that the Commonwealth has not communicated to the Contractor which option should be followed, the Contractor shall perform the actions listed in option (1).
12. The parties agree that they receive all information communicated between them before the execution of this Agreement in strict confidence and that the receiving party, its agents, or employees shall not, without prior written consent of the other party, disclose any such information, subject to Commonwealth of Kentucky and federal disclosure laws.
13. Contractor shall not represent that a working copy, draft, or the finalized version of this Agreement is identical to a previous iteration of this Agreement if the Contractor has made edits since the last iteration. Contractor shall clearly present all edits, either through editing functions in word processing software, or as a list provided contemporaneously with the most recently edited iteration.
14. During the term of this Agreement, Contractor shall be authorized in its sole discretion to discipline, terminate, or take any other personnel action against Contractor personnel. Upon communication by Commonwealth of an issue with Contractor personnel, Contractor shall have the sole authority to take action to effect a solution.
15. In no event shall any person or entity be deemed to be a third-party beneficiary of this Agreement.
16. Contractor acknowledges that the Commonwealth may execute agreements with other vendors for additional or related goods and services that address, interact with, or otherwise regard this Agreement. Contractor shall fully cooperate with such other vendors and vendor personnel, agents, and designees. Contractor shall not commit any act; allow any omission; or permit its personnel, agents, or designees to commit any act or allow any omission that will interfere with the performance of work by any other vendor or any other vendor's personnel, agents, or designees.
17. Each party shall provide a contact to resolve any and all issues related to this Agreement and promptly update the contact information as necessary.

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18. All notices under this Agreement shall be given in writing. Electronic mail constitutes a writing.
19. No change, waiver, or discharge of any liability or obligation under this Agreement on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
20. No party shall assign its respective rights or obligations under this Agreement without prior written consent of the other party. Any purported assignment or delegation in violation of this Agreement is void.
21. The terms and conditions of this Agreement may only be amended by mutual written consent of both parties.
22. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky.
23. Contractor agrees that any and all violations of this Agreement may result in the immediate termination of this Agreement.
24. Both parties shall have the right to terminate and cancel this Agreement at any time not to exceed thirty (30) days' written notice served on the other party by registered or certified mail.
25. The parties agree that any claim, action, or lawsuit arising under this Agreement must be brought in Franklin Circuit Court in the Commonwealth of Kentucky, and each party hereby consents to the jurisdiction and venue of such court and waives all objections as to forum non convenience or similar doctrine. If any term or provision or any part of this Agreement is declared invalid or unenforceable, the remainder of this Agreement shall not be affected, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by the law.
26. The descriptive headings in this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the terms and conditions within nor any materials incorporated by reference. No provision of this Agreement shall be construed in favor of or against any party on the ground that such party or its counsel drafted the provision.
27. This Agreement is the final and exclusive agreement between the parties. All prior negotiations and agreements are superseded by this Agreement.
28. Nothing in this Agreement shall be deemed to waive, or otherwise limit, the rights, privileges, immunities, including sovereign immunity granted under Kentucky Constitution §§ 230 & 231 and the United States Constitution Eleventh Amendment, and matters of defense now available or hereafter made available to the Commonwealth and/or its officers and employees.

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**Memorandum of Agreement Standard Terms and Conditions
Revised January 2023**

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 Contractor by registered or certified mail.

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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 contract to reveal to the Commonwealth 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. Disclosure of any violations is required prior to the award of any state contract and throughout the duration the contract.

Failure to disclose violations, shall be grounds for the Commonwealth's disqualification of a contractor or subcontractor from eligibility for future state contracts for a period of two (2) years.

To comply with KRS 45A.485, the Contractor and all subcontractors performing work

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under this contract shall report any such final determination(s) of any violation(s) within the previous five (5) years to the Commonwealth by providing a list of the following information regarding any violation(s): (1) specific KRS violated, (2) date of any final determination of a violation, and (3) state agency which issued the final determination.

A list of any disclosures made prior to award of a contract shall be attached to the contract.

The Contractor affirms that it has not violated any of the provisions of the above statutes within the previous five (5) year period, aside from violations explicitly disclosed and attached to this contract. Contractor further affirms that it will (1) communicate the above KRS 45A.485 disclosure requirements to any subcontractors and (2) disclose any subcontractor violations it becomes aware of to the Commonwealth.

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, 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

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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 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,

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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

Title

Printed Name

Date

Other Party:

Signature

Title

Printed Name

Date

Approved as to form and legality:

Attorney