

**Terms and Conditions for
MEMORANDUM OF AGREEMENT
Between
The Commonwealth of Kentucky, Education and
Labor Cabinet, Office of Vocational Rehabilitation
and
SIMPSON COUNTY BOARD OF EDUCATION**

This Memorandum of Agreement (“MOA”) is entered into, by and between the Commonwealth of Kentucky, Education and Labor Cabinet, Office of Vocational Rehabilitation, (“OVR” or “Commonwealth”) and SIMPSON COUNTY BOARD OF EDUCATION as the Local Education Authority (“LEA”) to establish an agreement for the Community Work Transition Program (“CWTP”).

This MOA is effective from July 1, 2024, through June 30, 2025.

I. Scope of Services

The CWTP Vocational Rehabilitation (“VR”) program is designed to assist OVR “eligible” and “potentially eligible” students with disabilities who have identified work as a desired post-school outcome and have demonstrated a need for assistance to transition from high school to employment. The primary goal of this program and all services provided is to improve the transition of students with disabilities into competitive integrated employment prior to high school exit. Additionally, program goals are to provide exposure and experiences in career and employment opportunities in order to improve transition into postsecondary education and training. 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.

Transition Services and Pre-Employment Transition Services (Pre-ETS) are the two components of the CWTP that can be utilized. Transition Services include a set of services that assist the student directly with job search and placement prior to high school exit. Transition Services are typically provided to 11th and 12th grade students who intend to obtain employment prior to high school exit. These transition services are also available to students through grade 14. Pre-ETS may be provided to students regardless of grade or desired post-school outcome. Pre-ETS, as the earliest set of services available, are most beneficial to students in the early stages of employment exploration and exposure. These services are short-term in nature and designed to help students identify career interests. Transition services are required to be provided whereas Pre-ETS are optional.

A. LEA shall:

1. Complete and submit a CWTP application to OVR and the University of Kentucky Human Development Institute (“HDI”) expressing LEA’s intent to participate in CWTP for the upcoming school year.
2. 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.
3. Ensure the ES attends the CWTP annual mandatory training provided by the HDI. It is strongly encouraged that other school staff involved in the CWTP attend annual trainings as well (e.g., ES’s direct supervisor, primary contact). Through HDI’s annual training, staff are appropriately trained on the most current, approved methods of service delivery as described in OVR’s CWTP Procedures Manual. Invoices will not be accepted by OVR from LEA personnel who have not attended the annual mandatory training.
4. Ensure each CWTP ES identified on the annual CWTP application shall be allowed release time to attend mandatory scheduled trainings.
5. Ensure the ES receives a copy of this MOA to provide a comprehensive understanding of the requirements of the contract and their roles and responsibilities.
6. Ensure students have available transportation to participate in the activities of the CWTP.
7. 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.

8. 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.
9. Allow HDI access to provide individual program evaluations, program audits and technical support, as necessary.
10. 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.
11. 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.
12. Make a request for a service exception to the OVR Administrator prior to making a service exception for a student.
13. 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.
14. 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: Pre-ETS Referral Form, Comprehensive Vocational Assessment ("CVA") Student Activity Reports, CVA Report, 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.
15. Provide CWTP Transition Services (required) and Pre-ETS (optional) 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").
16. Provide CWTP Transition Services to students in their final two years of high school (typically 11th and 12th grade through grade 14 when applicable). Maximum number of Transition Services students per ES should not exceed 12.

17. Refer Potentially Eligible students to the OVR counselor in order to apply for VR services. These students have expressed the goal of employment prior to high school exit and have demonstrated the need for individualized transition services in accordance with their Individualized Education Plan (“IEP”).
18. Ensure the completion and submission of all required documentation to OVR and as described in CWTP Procedures Manual. Required documentation shall include:
 - a. Completed Pre-ETS 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;
 - d. Comprehensive Vocational Assessment, CVA Activity Notes, 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 has authorizations prior to providing transition services.
20. Ensure the ES will work with each student authorized 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.
21. 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.
22. Obtain information for the CVA in part by conducting activities (minimum of 10 hours up to 20) with the student. Time should be spent conducting activities at work or employment sites in the community with the student. These activities are used to ensure the assessment process provides thorough content for the CVA. During the CVA completion process, CVA Student Activity Reports shall be submitted by the 5th of each month to OVR.

23. Conduct a Job Development/Job Coaching Planning Meeting to plan job development/job coaching activities for a student.
24. 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"). Job Development (searching for employment) begins after the Job Development/Job Coaching Planning Meeting. Job Coaching begins after the student obtains employment.
25. Ensure the ES provides individualized, weekly Job Development/Job Coaching activities in the community for the expressed purpose of the student attaining (Job Development) and maintaining (Job Coaching) employment prior to exiting high school.
26. 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 within the final quarter of the student's last year of high school.
27. Submit to OVR a Job Placement Report once a student is employed in a competitive and integrated setting that meets the guidelines and vocational goal of the student's IPE. Job Placement Report is 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.
28. 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.
29. Ensure compliance with state and federal law, and requirements from the U.S. Department of Labor regarding student wages.

If LEA elects to provide Pre-ETS, the LEA Shall:

30. In accordance with the Workforce Innovation and Opportunity Act (“WIOA”) Section 113(A), provide Pre-ETS only to students with disabilities in need of such services who are ‘eligible’ or ‘potentially eligible’ for OVR services. Pre-ETS, shall not be provided until the LEA has received prior authorization from OVR for the individual student. OVR approval of the Pre-ETS referral and approval in Pre-VR will serve as the authorization for provision of Pre-ETS.
31. Refer students with disabilities to OVR for Pre-ETS provision and include with referral the student’s IEP, 504 plan or disability documentation.
32. 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.
33. 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 category of the 5 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 Pre-ETS category.
 - a. An outcome note that specifies the *individualized details* for the individual student as it pertains to the activity performed.
34. Ensure that no less than 20% of students receiving Pre-ETS through CWTP apply for OVR services each year.

B. OVR shall:

1. Ensure the OVR counselor determines that CWTP Transition Services are appropriate for the student based on the following criteria:
 - a. Prior to implementing CWTP Transition Services, student must be determined eligible for OVR services and have a significant disability;

- b. Student must require services from an ES in order to obtain and maintain employment;
 - c. The student and parent/legal guardian have expressed a desire for the student to get a job in the community and be in the program;
 - d. There is time in the student's schedule to allow for community activities;
2. Have the final authority to decide whether a student may continue in CWTP and/or what services are appropriate.
3. Provide fee-for-service reimbursement to the LEA for Pre-ETS and Transition Services provided by the LEA, pursuant to the rates and requirements set forth in the Invoicing section of this MOA.
4. 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 (e.g., CWTP Transition Services, OVR vocational guidance and counseling).
5. Review invoices and supporting documentation prior to processing for payment to ensure completeness of data, ensuring invoices are accurate and reflect those services initially authorized for each student match service sessions listed.
6. Authorize all CWTP services prior to service provision, as OVR determines necessary, through the OVR Case Management System ("CMS") or Pre-VR system, as services are needed.
7. Monitor authorizations and invoices for the provision of Pre-ETS and Transition Services. If it is determined that a LEA has not provided sufficient Transition Services to new and current CWTP Transition Services students by January of the school year, OVR may temporarily cease the provision of Pre-ETS until transition services are implemented.
8. Ensure OVR counselor authorizes for CWTP transition services in accordance with the OVR policies and procedures manual.
9. Assure the student is in receipt of career counseling and information, referral for 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.
10. Ensure all applicable OVR policies and procedures are maintained statewide.

11. Ensure all parties involved with CWTP are appropriately trained and provided with support from OVR and HDI as needed.
12. Review CWTP mandatory training components on a yearly basis.
13. Provide guidance and technical assistance to LEA.
14. Ensure LEA expenditures are appropriate, solely for OVR consumers and deemed appropriate for the program.
15. 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 for 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.
16. 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.
17. 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.
18. Ensure VR Counselors use the CVA report to determine a student’s vocational goal when writing or amending the IPE.
19. Ensure VR Counselors attend the Job Development/Job Coaching Planning and Exit Planning Meetings to plan unique, vocationally relevant activities for students.
20. 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.
21. Develop IPEs for students, when appropriate, noting the need for CWTP transition services, and provide services in accordance with IPEs.
22. 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.

23. 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.
24. Monitor program expenditures by VR Counselors for services approved under this MOA.
25. Ensure assigned VR Counselors attend CWTP trainings provided by HDI.
26. Review the need for and ensure the provision of assistive technology when students are in an employment setting, when applicable.
27. Provide Social Security Benefits Planning, when applicable.
28. Refer for adult services, such as independent living, when applicable.

II. Budget and Invoicing

A. 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 authorize all Transition Services determined prior to provision to be necessary through the OVR Case Management System. Transition Services will be authorized on a quarterly basis. Each of the following Transition Services require an authorization prior to the service being provided.

The LEA shall provide reports associated with the corresponding Transition 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. **CVA Activities:** During the CVA process, activities should be conducted with the student at work or employment settings in the community. These activities are used to ensure the assessment process provides thorough content for the CVA. Reports shall be submitted monthly until the final CVA report is completed and submitted. CVA Activity Reports are due by the 5th of the month following provided services. All CVA Activity hours (minimum of 10 up to 20 hours maximum) should be completed, documented, and submitted to OVR prior to the CVA being

- completed for submission. This service fee shall be billed at \$50.00 per hour at a minimum of 10 hours with a maximum of 20.
- c. Positive Personal Profile (PPP) Report: in accordance with the review and submission process in the CWTP Policy & Procedure Manual, this optional report and invoice shall be submitted upon completion, within the quarter authorized. This service fee shall be billed at \$100.00 per approved PPP Report.
 - d. Family Engagement Interview (FEI) Report: in accordance with the review and submission process in the CWTP Policy & Procedure Manual, this optional report and invoice shall be submitted upon completion, within the quarter authorized. This service fee shall be billed at \$100.00 per approved FEI Report.
 - e. 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.
 - f. 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 \$50.00 per hour, with a maximum of 30 hours billable per quarter.
 - g. 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.
 - h. 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.
 - i. 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.

- j. 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.

B. Pre-ETS Authorizations and Reporting

LEA shall not begin services prior to student approval in the Pre-VR System. OVR approval in Pre-VR will serve as the authorization for the provision of Pre-ETS. Pre-ETS provided by the LEA without prior approval will not be paid. OVR shall authorize on a yearly basis for each student and pay the LEA the following for Pre-ETS provided.

Fees:

- a. One (1) student billed at \$90.00 per hour.
- b. Two (2) students are billed at a \$48.60 (per student) hourly rate for a total of \$97.20 per hour.
- c. Three (3) students are billed at a \$36.90 (per student) hourly rate for a total of \$110.70 per hour.
- d. Four (4) students are billed at a \$29.70 (per student) hourly rate for a total of \$118.80 per hour.
- e. Five (5) to ten (10) students are billed at the base rate per hour with a total of \$150.00 per hour.
- f. Eleven (11) to twenty (20) students are billed at the base rate per hour with a total of \$200.00 per hour.
- g. Twenty-one (21) or more students require an exception request to be sent to and approved by the OVR CWTP Administrator 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 for larger groups to participate in Pre-ETS. The LEA shall seek written approval from OVR prior to conducting group activities with more than twenty-one (21) 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.

Pre-ETS 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 but no earlier than the 16th 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; (e.g., Board of Education Name)
 2. Reference to OVR (e.g., "Bill to: OVR");
 3. Unique Invoice Number;
 4. Invoice Date; (e.g., date invoice is submitted)
 5. Dates of service in which services were provided (e.g., "September invoice Dates of Service 09/01/2024-09/30/2024");
 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.

III. Points of Contact

OVR Contact:

Vocational Rehabilitation Administrator
Mayo-Underwood Building
500 Mero Street
Frankfort, KY 40601
502-782-3356
beth.mcdaniel@ky.gov

LEA Contact: (Job Title, Mailing Address, Phone, Email or Inbox Address)

Kelly Baker
Director of Special Education
430 South College St., Franklin, KY 42134
kelly.baker@simpson.kyschools.us
270-586-8877

IV. 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.

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 suspected data incident or suspected data 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. Termination for Cause and/or Breach

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. Obligations and Rights

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: