

## Memorandum of Agreement Terms and Conditions

This Memorandum of Agreement (MOA) is entered into, by and between the Commonwealth of Kentucky, Office of Vocational Rehabilitation ("the Commonwealth") and KEDC ("the Contractor") to establish an agreement for the provision of the Workforce Innovation and Opportunity Act, 2014, and Rehabilitation Services Administration's required provision of pre-employment transition services to students with disabilities. The initial MOA is effective from July 1, 2018 through June 30, 2020

### Scope of Services:

There are 173 local school districts and the Kentucky Schools for the Blind and Deaf throughout the state of Kentucky. All are members of the nine Special Education Cooperatives. The Special Education Cooperative Network is intended to assist local school districts in meeting the needs of its member districts. Services range from technical assistance, trainings, professional development, specialized services, research, and other needs identified by member districts and the Kentucky Department of Education. This Educational Coop has agreed to plan, coordinate and carry out student focused activities for high school students with disabilities (age 14-21) who are eligible or potentially eligible for OVR services in their region.

This Educational Coop director has agreed to carry out the following three tasks for the Office of Vocational Rehabilitation in order to assist OVR to develop and implement the five core pre-employment transition services as required by the Workforce Innovation and Opportunity Act (WIOA, Sec 422.113 (c) (5)&(8)). The five services are: job exploration counseling, work based learning experiences, counseling on post-secondary educational opportunities, workplace readiness training, and instruction in self-advocacy. Part of the coordination costs will include the location, facility, speakers, transportation, and materials necessary to provide the activity or event(s).

**All contracted activities must focus exclusively on school students with disabilities, age 14-21, in need of pre-employment transition services who are eligible or potentially for the Office of Vocational Rehabilitation services. Schools may be secondary, public or private, home schooled, post-secondary educational colleges or universities, adult education, or an alternate school setting such as Juvenile Justice Services. (WIOA, Sec 422.113 (c) (5)&(8))**

**Objective 1:** The regional Educational Cooperative will provide no less than two pre-employment transition services focused trainings per year of the contract (four total). The large scale conference/trainings will provide opportunities for participation for all districts in their regions.

The objective of the training is to provide informational sessions on job exploration, work based learning experiences, post-secondary options, workplace readiness training, and self-advocacy, including peer mentoring. These components are based on the Office of Vocational Rehabilitation (OVR) requirement of providing pre-employment transition services for all students with disabilities who are eligible or potentially eligible for OVR services. (WIOA, Sec. 422.113 (a)&(b))

The purpose is to bring students with disabilities across school district lines together for the dissemination of transition related information and provide trainings on topics related to transitioning from high school to post high school activities, including employment.

**Objective 2:** Staff will coordinate with LEAs to provide the opportunity to participate in a variety of summer workshops/camps/internships/local college visits as developed and coordinated by the Cooperative OVR Transition Specialist. The Cooperative may partner with another entity to provide activities as long as clear division of cost is calculated. Staff may partner with local businesses to ensure summer work experiences are available to students with disabilities in their area, along with stipends to

the students for participation.

**Objective 3:** Develop, plan, coordinate and carry out comprehensive weekly group workshops to the schools in their district during the school year.

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Within the first quarter of each contract year the Cooperative will provide to the OVR Administrator an overview of their plan to implement in-school workshops and summer activities with timelines.

The educational cooperative will provide initial plans for each youth conference prior to the event and include an OVR contact person on their planning committee that will assist with the planning and development.

The budget must include all costs associated with providing the contracted services.

OVR Administrator must pre-approve agendas, curriculum, and all activities associated with providing the contracted services. Budget considerations include: staffing, number of school districts participating, the number of students estimated to participate based on the head count, the proposed curriculum for the workshops, summer workshop proposals, and an overview of their plan to implement with timelines.

The coops must have a pre-registration system in place with their local schools participating in their programs to ensure the OVR office receives the student information in a timely fashion. They will also maintain a comprehensive plan for data collection and quarterly reporting.

OVR will participate in the hiring of the staff, determine qualifications and will establish the staff goals and outcome expectations for performance. The staff will be certified full time staff, with benefits, with minimum bachelor's level of education and 5 years of experience working with students with significant disabilities. The staffing contract will be for a minimum of 215 days.

The Cooperative may partner with local Community Rehabilitation partners, post-secondary educational partners, career centers, advocacy groups and parent organizations in order to best service the students but there must be a clear division of tasks, work product, and costs to ensure no double billing to VR.

Special underserved student populations (foster care, DJJ, low incidence) may also be served by partnering with organizations best suited to the needs of the students. Utilizing existing cooperative educational staff such as outreach consultants, CCR consultants, etc. may also be counted as staff time on the contract when they are working directly with the student during a workshop.

Quarterly data collection and reporting requirements are: student permission from parents to participate, dates, activities, student information (911 data), sign-in sheets, and other data deemed necessary for VR monitoring requests.

Other agencies and additional staff may be contracted to assist with ensuring the programs are a success. Incentives to the students for participation are allowable. Coordinating with businesses to provide students with work experiences may warrant a stipend or a payment to the student; this is allowable but must be pre-approved.

**MONITORING:**

For each contracted task: before: we request student data collected (including documentation of their specific disability, parent permission, required Pre-ETS activity); after: provide number of students in attendance and conference evaluations. Other required submissions will be any receipts /contracts for purchases related to the conference or workshops, copy of presentation materials, agenda, biographies

of speakers, and summaries of sessions. This information is required for federal monitoring purposes to ensure we are allocating funds for specific allowable expenses. If this information is not provided activities may be suspended until such a time that the required information is delivered.

**Pricing:**

**KEDC PRE-ETS Draft Budget**

**\$320,000 for 2 years**

<b>2018-19</b>	<b>\$160,000</b>
Salaries - Julia(220 days) and Lacey (110 days)	\$90,277
INSTRUCTOR/COORDINATOR - Fringe	
KTRS Match	\$14,540
Medicaid	\$1,309
Unemployment	\$90
Health Insurance	\$23,000
Workers Comp	\$334
Sick Leave	\$903
Travel	\$1,318
TRANSITION FAIRS	\$10,747
SUMMER WORKSHOPS	\$6,000
INDIRECT	\$11,482
	<b>\$160,000</b>

<b>2019-20</b>	<b>\$160,000</b>
Salaries - Julia (220 days) and Lacey (110 days)	\$90,277
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TRANSITION FAIRS	\$10,747
SUMMER WORKSHOPS	\$6,000
INDIRECT	\$11,482
	<b>\$160,000</b>

**Cancellation clause:**

Either party may cancel the agreement at any time for cause or may cancel without cause on 30 days' written notice.

**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 days written notice of termination of the agreement due to lack of available funding.

**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 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.

**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(8) and (10), 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).

**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.

**Violation of tax and employment laws:**

KRS 45A.485 requires the Contractor and all subcontractors performing work under the agreement to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the Contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the Contractor and all subcontractors performing work under the agreement shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency who issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the Contractor and all subcontractors performing work under the agreement shall be in continuous compliance with the provisions of those statutes, which apply to their operations, and that their failure to reveal a final determination as described above, or failure to comply with the above statutes for the duration of the agreement shall be grounds for the Commonwealth's cancellation of the agreement and their disqualification from eligibility for future state contracts for a period of two (2) years.

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

Contractor must check one:

The Contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

The Contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). Attached is a list of such determination(s) , which includes the KRS violated, the date of the final determination, and the state agency which issued the final determination.

**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:

1. 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.

2. In all solicitations or advertisements for employees placed by or on behalf of the Contractor, the Contractor will, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## ADDITIONAL EDUCATION AND WORKFORCE CABINET TERMS AND CONDITIONS

- (1) Modifications or Amendments

Proposed amendments, modifications, or revisions to the 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

All questions as to the execution, validity, interpretation, and performance of this Agreement shall be governed by the laws of the Commonwealth of Kentucky. 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 Recipient in the following amounts and using the methods set forth below:

  - (a) For performance of the services specified herein, the Office of Vocational Rehabilitation agrees to pay contractor the sum of \$160,000 FY 2018 and \$160,000 in FY 2020. Unless specifically precluded in the agreement, funding can be automatically carried forward from year 1 to year 2 in a two year contract within the parameters of the agreement but cannot extend beyond the end date of the agreement. In a case of a one year contract a only if a modification to the MOA was completed can any funds extend into a 2<sup>nd</sup> year.
  - (b) The Schedule of Payment to the (Contractor) from the Office of Vocational Rehabilitation shall be on the basis of monthly payment(s) based on billing(s) of expenditures sent to (AGENCY ADMINIDTRATOR) email @ky.gov, cc Lori Miller email Lori.Miller@ky.gov and cc \_\_\_\_\_ email \_\_\_\_\_ for the respective month from the total direct and indirect funds authorized for support of program work performance during the fiscal year from July 1, 2018 through June 30, 2020. .
  - (c) Payment
    1. 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.
    2. Preliminary or Pre-Agreement Costs

Certain preliminary costs for services, incurred by Recipient prior to the execution of the grant 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.
    3. Interest

The Commonwealth shall fully pay each invoice within 30 days of receipt thereof if the amount invoiced represents performance by Recipient previously accepted by the Commonwealth. A penalty payment of one percent (1%) per month shall be added to

the amount due the vendor for each full or partial month that the payment exceeds 30 working days.

4. 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, Recipient'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.

- (d) **Use of Funds.** Pursuant to 2 CFR 200.420 to 200.475, funds shall be used only for eligible costs identified herein and/or in the Budget.

(4) Confidentiality

Personnel employed by OVR and the Recipient 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 Recipient shall be immediately forwarded to the OVR's principal representative.

All parties agree that any consumer information disclosed by OVR 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 termination of this agreement and any and all other relevant and applicable penalties and sanctions to the disclosing party.

(a) Notification

Recipient shall notify its agent, employees, Subcontractors, and assigns who may come into contact with 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 Recipient or its agents in any way, except as authorized by this Agreement or approved in writing by the Commonwealth. Recipient shall provide and maintain a secure environment that ensures confidentiality of all OVR records and other confidential information wherever located.

(5) Fiscal Controls

The Recipient 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 Recipient 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

All records shall be maintained for three (3) years by the Recipient after the Agreement ends and the final financial report is submitted or until all audit questions are resolved, whichever is later.

(c) Type of Records

The Recipient will maintain records related to this agreement that fully disclose and documents:

1. The amount and disposition by the Recipient of all funds received by it from the Commonwealth;
2. The total cost of the project or undertaking in connection with the project with which the funds are given or used;
3. The amount of that portion of cost of the project supplied by other sources;
4. All expenses, including payroll records, to ensure that costs reported on invoices are allowable, allocable, and reimbursable costs under the award; and
5. How the Recipient 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 Recipient shall comply with any and all applicable state and federal laws, regulations, or policies regarding conflicts of interest. The Recipient shall immediately disclose to OVR any conflict of interest that it becomes aware of.
- (b) Inclusion in Subcontracts. The Recipient shall include the substance of this Section in all subcontracts.

(8) Audit

- (a) The Recipient 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 8:00 a.m. to 4:30 p.m., local time, Monday through Friday.
- (c) The Recipient 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 Recipient is a State or local government or a non-profit organization 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 Recipient expends \$750,000 or more in Federal awards in its fiscal year, the Recipient 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 Relation to other audit requirements, 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 the audit shows that the entire funds disbursed hereunder, or any portion thereof, were not spent in accordance with the conditions of this Agreement, the Recipient 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 Recipient of such noncompliance.
- (g) If the Recipient is subject to Single Audit requirements the Recipient shall have all audits completed by an independent certified public accountant (IPA) who shall either 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 Recipient's fiscal year.

(9) Subcontracting

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

(10) Erroneous Payments

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

(a) Termination for Cause and/or Breach

If Recipient 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 Recipient of such non-performance in accordance with the provisions herein. If Recipient 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. Recipient 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, Recipient 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, Recipient 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, Recipient shall assign to the Commonwealth all of Recipient's right, title, and interest under such terminated orders or sub-Grants. Upon termination, Recipient shall take timely, reasonable and necessary action to protect and preserve property in the possession of Recipient in which the Commonwealth has an interest. All materials owned by the Commonwealth in the possession of Recipient shall be immediately returned to the Commonwealth. All Work Product, at the option of the Commonwealth, shall be delivered by Recipient to the Commonwealth and shall become the Commonwealth's property.

(c) Payments

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

(d) Remedies Not Involving Termination

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

1. Suspend Performance

Suspend Recipient's performance with respect to all or any portion of this Agreement pending necessary corrective action as specified by the Commonwealth without entitling Recipient to an adjustment in price/cost or performance schedule. Recipient 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 Recipient after the suspension of performance under this provision.

2. Temporarily Withhold Payment  
Payment will be made upon satisfactory delivery of services.
  3. Disallow or Deny Payment  
Deny payment for those obligations not performed, or, that due to Recipient'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.
  4. Removal  
Demand removal of any of Recipient'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.
- (e) Intellectual Property  
If Recipient infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Agreement, Recipient shall, at the Commonwealth's option (a) obtain for the Commonwealth or Recipient 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.
- (f) 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 Recipient 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 Recipient 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 Regulations (EDGAR), 34 CFR Parts 74-99;
  - (c) Rehabilitation Act of 1973, as amended, 29 USC 701 et seq.
  - (d) Special terms and provisions specified in the Notice of Federal Financial Assistance Grant Award;
  - (e) Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60). [All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subcontractors];
  - (f) The Copeland "Anti-Kickback" Act (18 U.S.C. § 874) as supplemented in Department of Labor regulations (29 CFR Part 3). [All contracts and subgrants for construction or repair in excess of \$2,000];

- (g) Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). [Construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers];
- (h) Standards, orders, or requirements issued pursuant to the Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251 et seq.). Violations shall be reported to USDE and the Regional Office of the Environmental Protection Agency (EPA);
- (i) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163);
- (j) Office of Management and Budget Circulars 2 CFR Part 200, 2 CFR Parts 215 and 220 (formally A-21), 2 CFR 225 (formally A-87), 2 CFR 215 (formally A-110), 2 CFR 230 (formally A-122) and A-133, as applicable;
- (k) The Hatch Act (5 U.S.C. §§ 1501-1508) and Public Law 95-454, Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs;
- (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;
- (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.
- (p) 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;
- (q) 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 Recipient on the basis of race, color, national origin, age, sex (in education activities) or disability.
- (r) Protection of Human Subjects. To the extent applicable to it, the Recipient agrees to comply with the requirements set out in 34 CFR Part 97 relating to research that involves human subjects.
- (s) Drug and Alcohol Abuse Prevention Program. The Recipient 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

Recipient'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 Recipient or the Commonwealth are subject to all of the provisions hereof. Recipient 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 Recipient 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 Recipient 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 Recipient 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

Recipient makes the following specific representations and certifications, each of which was relied on by the Commonwealth in entering into this Agreement:

(a) Standard and Manner of Performance

Recipient 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.

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

(25) Reporting Requirements

The Recipient shall comply with the following reporting requirements:

(a) Performance and Progress

Recipient 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 Recipient receives the notice to proceed, and every three (3) months thereafter until final approval of the completed Project is performed by the Commonwealth. The quarterly reports shall reflect the Recipient's progress in meeting its stated goals and objectives. After the Project is completed, Recipient 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 will still be able to meet its performance reporting obligations to the Federal agency.

(b) 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 Recipient 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 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 Recipient's ability to perform its obligations hereunder, Recipient 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

Recipient'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.

(26) Approvals

(a) Signatory Authority

The Recipient assures and guarantees that the Recipient 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 Recipient has obligated itself to perform pursuant to this Agreement.

(b) Authorized Representative

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

(27) 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 Provider 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 Provider certifies that it will disclose to OVR in a timely manner in writing all offenses enumerated in this certification.



**Approvals**

This agreement is subject to the terms and conditions stated herein. By affixing signatures below, the parties verify that they are authorized to enter into this agreement 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 agreement 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 agreement.

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