

**Warren County Educational Service Center
Master Service Agreement (Not Aligned District)
Revised 4/30/2021**

This Master Service Agreement shall be deemed effective between the **Governing Board of the Warren County Educational Service Center** (the "ESC") and the entity named on the applicable Service Quote (the "Customer") as of the date the Service Quote is executed by Customer and is subject the following contractual terms:

Section 1 Services

Pursuant to R.C. 3313.844, 3313.845 and 3313.846 (as applicable), and subject to the terms and conditions of this Master Service Agreement, the ESC agrees to provide those programs or services authorized by the Ohio Revised Code, requested by the Customer, and agreed to by the ESC as set forth in the applicable Service Quote (the "Services"). Available services are described in the ESC's Brochure of Services, a copy of which is provided periodically to the Customer and which can be viewed at www.warrencountyesc.com. The Catalog of Services can be amended by the ESC at any time. Additional services may be provided as agreed upon between the ESC and the Customer.

Section 2 Service Quote

Services selected by the Customer shall be detailed in a Service Quote provided by the ESC to Customer in accordance with the ESC's customary practice or upon request of Customer. The Service Quote describes the Services selected by Customer and includes an estimated cost of such Services. The Services selected and Service Quote may be amended at any time, by agreement between the designated representatives of the ESC and the Customer. A copy of the Service Quote, as amended, shall be signed by designated representatives of the ESC and Customer and shall supersede and take the place of all prior Service Quotes for the amended Services.

Section 3 Term

The term of this agreement commences with the date the Service Quote is executed by Customer through the end of the ESC's then-current fiscal year (June 30th), unless otherwise specified in the Service Quote. The Agreement shall automatically renew for an additional year unless either party provides written notice of termination to the other party at least sixty (60) days prior to the end of the then-current term.

Section 4 Responsibilities of the Customer

The Customer will cooperate with ESC staff to identify ESC Services to be delivered. The Customer will provide for facilities for ESC staff so that services may be delivered on-site including meeting and classroom space for the staff and students; mailbox and parking space for the staff; access to all necessary student records; work space for the staff; telephone, Internet, fax and copier access; secured filing space for student records; and access to the school recruitment team, including administrators, counselors, social workers, nurse, psychologist and attendance officer. Furthermore, the appropriate contact person from the Customer will assist the ESC in determining the location and time for the services to be delivered. If not otherwise indicated in

the Service Quote, the Customer will provide any necessary transportation for students to participate in selected Services.

In the event that the ESC provides special education services to Customer and its students, the Customer agrees that a representative of Customer shall attend all IEP meetings. The Customer further agrees that the provision of special education services to students under state and federal law, including but not limited to Ohio's Operating Standards for the Education of Students with Disabilities, is ultimately the responsibility of Customer and that nothing contained herein shall be construed or interpreted to relieve Customer of that responsibility.

The ESC and the Customer agree that the Customer may sub-contract out the ESC's services by separate mutual written agreement. All sub-contracting shall be identified in the Service Quote. In the event that sub-contracting is agreed upon, the Customer shall notify the ESC prior to any assignment or location changes of sub-contracted employees. The ESC reserves the right to approve or deny any change.

The Customer agrees that it will certify the availability of funds for the obligations under this Agreement. To the extent required by Ohio Revised Code Sections 5705.41 and 5705.412, Customer shall certify the availability of funds in accordance with those provisions.

During the period in which this Agreement is in effect and ending one year after the termination or expiration of this Agreement, Customer will not directly or indirectly, on Customer's own behalf or in the service or on behalf of others, in any capacity induce or attempt to induce any employee to leave the ESC without the written permission of the ESC's Superintendent. In addition, Customer agrees not to employ any ESC employee who performed services for the Customer while employed by the ESC for a period beginning with the last day of service provided to the Customer by the ESC employee and ending one year thereafter. In the event the Customer violates these provisions, the parties agree that the ESC's damages are uncertain or difficult to ascertain and that the agreed upon liquidated damages of the ESC shall be equal to \$25,000. The parties further agree that such amount bears a reasonable relationship to, and is not plainly or grossly disproportionate to, the probable loss likely to be incurred in connection with any breach of these provisions.

Section 5 Responsibilities of the ESC

The ESC will provide the appropriate staff and work collaboratively with the Customer in order to serve the needs of the students. Services are intended to be provided in-person but the ESC shall provide such Services remotely or virtually when needed if school buildings are closed as a result of a public calamity, epidemic, pandemic, or other reason necessitating closure of the school building where Services are provided to students. Services may be provided by ESC personnel, by such other persons or entities as determined by the ESC, or by any combination thereof. The ESC shall designate an administrator to serve as a liaison with those contact persons designated by the Customer. The ESC agrees to fully abide by all Ohio laws relative to criminal record checks and the appropriate licensure of said individuals. The ESC retains the right, both initially and going forward, to immediately remove any employee or agent who does not meet the background or licensure standards, or who the ESC, in its sole discretion, determines is not appropriate for the then-current assignment.

In the event that the ESC provides special education services to Customer and its students, the ESC agrees to comply with state and federal law in the provision of those services.

If the Services provided by the ESC are provided pursuant to the Medicaid School Program, the ESC represents that none of its principles are suspended or debarred; that it will comply with the requirements of 45 CFR 164.504(e)(1) for safeguarding and limiting access to information concerning beneficiaries; and it shall allow representatives of the U.S. Department of Human Services, ODM, ODE, or their respective designee access to the ESC's books, documents, and records.

Section 6 Cancellation

The ESC reserves the right to cancel any one or all of the Services if an insufficient number of Customers elect to participate in a particular Service or if there is a discontinuation or reduction of funds or for any other reason deemed sufficient by the ESC, in its sole discretion. Written notice of such cancellation will be provided to the Customer by the ESC not less than 90 days prior to the discontinuation of the Service.

Section 7 Unemployment Benefits

In consideration of the Services contracted for herein, together with such other programs and services requested by the Customer and provided by the ESC, the Customer agrees to pay any unemployment compensation benefits which may become payable by reason of the Services provided under this Agreement or the termination of such Services. This Section shall only apply when the Services provided are for Customer-only programs or Services, including, but not limited to, the provision of one-on-one aides, the provision of a director of special education or similar position, the provision of a specific classroom that educates Customer students only, or specific hires requested by the Customer.

Section 8 Customer Withdraw and Termination

The Customer shall provide written notice of withdrawal from any one or more of the Services to the ESC not less than five days prior to the effective date of withdrawal. Notwithstanding the foregoing, if the Services provided by the ESC are for Customer-only programs or Services, including, but not limited to, the provision of one-on-one aides, the provision of a director of special education or similar position, the provision of a specific classroom that educates Customer students only, or specific hires requested by the Customer, Customer shall provide written notice of withdrawal not less than 90 days prior to the effective date of withdrawal.

In the event the Customer withdraws from all Services selected, this Agreement shall automatically terminate as of the withdrawal date of the last Service provided by the ESC to Customer.

Section 9 Compensation and Benefits

As used in this Agreement, and unless otherwise specified in the Service Quote, "Services" and "programs" include the costs of all services and/or programs provided by the ESC under this Agreement including, without limitation, the cost of all compensation and benefits paid or payable to any person assigned to the Customer under this Agreement, together with the cost of all textbooks, equipment and supplies provided to the Customer under this Agreement. The

compensation and benefits of personnel provided under this Agreement shall include, without limitation, the cost of salary, fringe benefits, sick leave, personal leave, vacation, retirement contributions, including any applicable surcharge payments, workers' compensation payments, unemployment compensation payments, Medicaid payments and any other sum that the ESC, or its designee, may be required to pay by reason of the employment and assignment of any such individual.

Section 10 Payments and Fees

Services shall be billed directly to the Customer as indicated below. The ESC will, at the end of each fiscal year, reconcile amounts paid by the Customer directly with the amounts due for programs and Services provided. Adjustments, if any, to such amounts based on agreed changes to the Services and programs provided under the Service Quote or based on the actual cost of the Services and programs provided shall be made within thirty days of the reconciliation.

All invoices and statements for the Services and programs provided herein by the ESC shall be due and payable not more than 30 days from the date of mailing of the invoice or statement by the ESC.

Related Services, such as Nursing, Psychology, Speech, Occupational Therapy, Social Work, Resource Coordinators, Physical Therapy, Attendance and other similar services are invoiced based on the number of contracted days per year.

Classroom Services, such as, Learning Center, Wellness Center, Transition Living Classroom, Social Communications, and other similar classrooms are invoiced based on the actual number of student enrollment days from enrollment date to the date of withdrawal.

Alternative School seats are invoiced based on the total number of seats purchased for the year.

Customized Services, such as, Preschool Classrooms, Multiple Disabilities Classrooms, Customized Classrooms, Paraprofessionals, Direct Hires for Districts (supervisors, teachers, etc.), Fiscal Services, Human Resource Services, and any other customized services are invoiced based on a quoted.

Payment for Related Services, Classroom Services, Alternative School seats, and Customized Services shall be due even if services cannot be provided due to a public calamity, epidemic, pandemic, or other reason necessitating closure of the school building where the services are provided to students. Notwithstanding the foregoing, payment for the foregoing services described in this paragraph shall not be required if the ESC implements a reduction in force to layoff an employee who was providing such services to Customer. The ESC shall consult with Customer prior to implementing such a layoff. Payments pursuant to Section 7 of this Agreement may be due to the ESC in the event of a layoff.

Section 11 Addenda

The Customer and ESC agree that the Services specified in the applicable Service Quote shall remain in place unless otherwise terminated in accordance with this Agreement. However, in recognition of changing pupil and customer needs, the parties agree that modifications to the Services may be made upon mutual agreement of the Customer's designee and the designated

representative of the ESC. Modifications executed by the Customer's designee must be within the amounts appropriated and certified by the Customer for any year in which the modifications are effective. All such modifications shall be made in writing and shall be attached to the Service Quote. A signed IEP submitted to the ESC by the Customer's designee shall constitute written notice and a modification to the Services to be provided under this Agreement, provided that such modifications are within the amounts appropriated and certified by the Customer as indicated above. Modifications that increase Services are subject to the availability of qualified staff. Modifications requiring a decrease in staffing levels, Services, or materials are subject to the ability of the ESC to reassign staff and redistribute Services and materials to other clients without cost to the ESC. After requesting such a modification, the Customer will remain responsible for all staff compensation and the cost of such Services and materials pending the completion of alternate staffing assignments and the redistribution of Services and materials to other clients of the ESC. By approval of this Agreement, the Customer authorizes the Designee of the Customer to agree to the provision of and payment for any Service Quote or Service modifications.

Section 12 Intellectual Property

Customer agrees that the ESC is the sole owner of all content and materials developed under this Agreement, pursuant to the "work made for hire" section of the Copyright Act. The ESC retains the entire distribution rights to any content or materials to exercise as it deems appropriate, with the exception of State or Federally funded materials that become part of the public domain pursuant to the terms of such funding. The Customer may not use, reuse, distribute, publish, or base derivative works upon such materials resulting from ESC projects without the express, prior written consent of the ESC.

Section 13 Amendment/Assignment

Except as expressly provided herein, this Agreement may only be modified or amended by a written agreement executed by both parties. This Agreement, and/or the obligations represented by this Agreement, cannot be assigned or transferred by the ESC without the express, prior written permission of the Customer. The ESC may, at its sole discretion, employ or subcontract with other individuals or entities to assist in the rendition of services provided under this Agreement.

Section 14 Liability

The Customer and the ESC shall each assume liability for loss, costs or damages resulting from the negligence of either of them, but shall not be liable for any loss, costs or damages resulting from the negligence of the other party.

Section 15 Entire Agreement

This Agreement and the Service Quote contain the entire agreement of the parties as to their subject matter and there are no other promises or conditions in any other agreement, whether written or oral. This Agreement and the Service Quote supersede any prior written or oral agreements between the parties with respect to the services to be provided as specified herein or in the Service Quote.

Section 16 Severability

If any provision of this Agreement shall be held to be invalid or unenforceable by any court or agency having jurisdiction over the parties for any reason, the remaining provisions shall continue to be valid and enforceable provided that either party may terminate this Agreement upon five days written notice following the determination of invalidity.

Section 17 Waiver of Contractual Right

The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel compliance with every provision of this Agreement.

Section 18 Applicable Law

This Agreement shall be governed and construed under the laws of the State of Ohio, and exclusive venue for any dispute arising hereunder shall be in Warren County, Ohio, or in the United States District Court for the Southern District of Ohio.

Section 19 Representations of the Parties

Signatories to the Service Quote represent: (1) that the signor has been duly authorized to execute the Service Quote and bind Customer to the terms of the Service Quote and this Agreement by resolution enacted in a public meeting conducted in compliance with all applicable provisions of law; and (2) the Customer is not subject to any unresolved findings for recovery by the Auditor of State.