

**MEMORANDUM OF UNDERSTANDING  
FOR  
THE ABLE TRUST  
IA-865**

**THIS MEMORANDUM OF UNDERSTANDING (MOU)** is entered into by and between the Florida Department of Education, Division of Vocational Rehabilitation, hereafter referred to as "DOE/DVR" and the Florida Endowment Foundation For Vocational Rehabilitation, Inc., d/b/a The Able Trust, hereafter referred to as the "Trust."

WHEREAS, the Department of Education ("DOE") is designated by section 413.201, Florida Statutes, as the official state agency for the purposes of effecting compliance with the Vocational Rehabilitation Act of 1973, as amended; and

WHEREAS, the Division of Vocational Rehabilitation ("DVR") is a division established within DOE, and is designated by section 413.202, Florida Statutes, as the administrative unit for the purposes of effecting compliance with the Vocational Rehabilitation Act of 1973, as amended; and

WHEREAS, the Trust was created by the Florida Endowment For Vocational Rehabilitation Act, section 413.615, Florida Statutes, as a direct-support organization of the Division of Vocational Rehabilitation, to encourage public and private support to enhance vocational rehabilitation and employment of citizens who are disabled; and

WHEREAS, the Trust is a Florida corporation not for profit incorporated under the provisions of chapter 617, Florida Statutes, and approved by the Department of State, and has registered the fictitious name "The Able Trust" with the Department of State; and

WHEREAS, section 413.615(5), Florida Statutes, requires the Trust to operate under a contract with DOE/DVR.

NOW, THEREFORE, both parties hereto agree as follows:

**I. MISSION.**

This MOU constitutes the basic rules of operation for the Trust as a Direct Support Organization of DOE/DVR. The Trust has been organized and is operated exclusively to raise funds; to submit requests and receive grants from the Federal Government, the state, private foundations, and individuals; to receive, hold, and administer property; and to make expenditures to or for the benefit of the rehabilitation programs approved by the board of directors of the Trust.

The Trust shall comply with all provisions of the Florida Endowment for Vocational Rehabilitation Act, section 413.615, Florida Statutes.

By execution of this MOU, the Trust is approved by DOE/DVR to be operating for the benefit and best interest of the state.

**II. APPROVAL OF THE ARTICLES OF INCORPORATION AND BY-LAWS.**

The Articles of Incorporation of the Trust, as they exist on August 27, 1991, are hereby approved by DOE/DVR. Any amendment to the approved Articles of Incorporation proposed by the Trust shall be not become effective until approved by DOE/DVR by written amendment of this MOU.

### III. GOVERNANCE.

The Trust shall be governed by a Board of Directors appointed by the Governor pursuant to section 413.615(8), Florida Statutes. The Board shall have the powers and duties granted pursuant to sections 413.615(9), Florida statutes.

The Trust shall give DOE/DVR at least 14 days written notice of all Board meetings. The Commissioner of Education, the DVR Director, or their designee, may attend any Board meeting.

### IV. APPROVAL OF ANNUAL BUDGET.

The fiscal year of the Trust shall begin on July 1 of each year, and end on June 30 of the following year. The Trust shall provide DOE/DVR with the Trust's proposed annual budget by June 10 of each year. By July 10 of each year, DOE/DVR shall inform the Trust whether or not the annual budget has been approved pursuant to section 413.615(6)(c), Florida Statutes. DOE/DVR may not approve an annual budget that does not comply with section 413.615(9)(j), Florida Statutes.

### V. CERTIFICATION.

The Trust shall provide a copy of the Annual Audit required by sections 215.981 and 413.615(11), Florida Statutes, and a copy of the Annual Report required by section 413.615 (12), Florida Statutes, to DOE/DVR within the timeframes established in those statutes. Within 30 days after receipt of both, DOE/DVR shall certify whether the Trust is operating in compliance with the terms of the contract and the rules of the division, and in a manner consistent with the goals of the Legislature in providing assistance to citizens with disabilities.

### VI. RELEASE OF STATE REVENUES.

State funds shall be released to the Trust as they are received from funding sources specified by the Legislature. The Trust shall only expend state revenues in accordance with the budget approved by DOE/DVR and pursuant to executed contracts.

### VII. TERM AND RENEWAL.

This MOU shall be effective when signed by both parties and shall expire September 30, 2020. This MOU may be renewed by mutual agreement of both parties.

### VIII. TERMINATION

- (a) If DOE/DVR determines that there is just cause sufficient to support a finding of malfeasance or misfeasance by the Trust with regard to the expenditure of funds held by the Trust, or that the Trust has violated this MOU in a manner that causes harm to the individuals that it was created to serve, it shall provide notice of this determination to the Trust along with the factual background information leading to the determination. The Trust shall be given 30 days to respond in writing to DOE/DVR regarding the matter. If DOE/DVR finds that the response from the Trust is insufficient, it shall notify the Trust and provide the Trust with an opportunity to cure. The Trust shall be given 45 days to cure the alleged errors or deficiencies. If the Trust does not cure the errors or deficiencies within 45 days, or if in the opinion of DOE/DVR the cure is inadequate, DOE/DVR may issue a written notice of termination. DOE/DVR may authorize a longer time period if, in the

opinion of DOE/DVR, a longer period is reasonable and necessary in order to cure the errors or deficiencies. In the event a cure is required by DOE/DVR but not implemented by the Trust, this MOU shall be terminated and all moneys held by the Trust shall revert to the State of Florida. Nothing herein shall limit the rights of the Trust in law or equity to challenge the decision of the DOE/DVR to terminate this MOU. If the MOU is ultimately terminated, DOE/DVR shall complete existing obligations of the Trust in effect at the time of termination if funds are available for this purpose.

- (b) Notwithstanding the requirements of paragraph (a) above, this agreement shall terminate if the Trust fails to submit the information required by section XIII for two consecutive years or upon the repeal of s. 413.615.

#### IX. ORDERLY CESSATION OF OPERATIONS

DOE/DVR shall work collaboratively to ensure the orderly cessation of the Trust's operations, including reversion to the state of state funds held in trust by the organization. The Trust shall initiate cessation activities no later than 120 days prior to termination of the agreement. Plans for orderly cessation of operations must address completion of contractual obligations and the ethical handling of staff, as well as movement of assets of the Trust to another entity.

#### X. INDEMNITY.

It is understood and agreed that neither of the parties to this MOU shall be liable for any negligent or wrongful acts, either of commission or omission, chargeable to the other unless such liability is imposed by law, and that this MOU shall not be construed as seeking to either enlarge or diminish any obligation or duty owed by one party against the other or a third person. In the event of a claim for any wrongful or negligent acts, each party shall bear the costs of their own defense. Nothing in this MOU is intended to serve as a waiver of sovereign immunity, except as provided by law, nor shall anything in this MOU be construed as consent of either party to be sued by third parties in any matter arising out of any agreement.

#### XI. CHOICE OF LAW AND VENUE.

This MOU will be interpreted under the laws of Florida, and Leon County, Florida, shall be the proper place of venue for all legal actions arising out of or in connection with this MOU.

#### XII. AMENDMENT.

Either party may propose amendments to this MOU. No amendment or modification to this MOU shall be effective unless in writing and signed by both parties.

#### XIII. INTERNET POSTING OF TRUST INFORMATION.

The Trust is required by section 20.058, Florida Statutes to provide certain information to DOE/DVR by August 1 of each year. The Trust shall make every effort to provide the following information to DOE/DVR by July 24 of each year:

- (a) The name, mailing address, telephone number, and website address of the organization.
- (b) The statutory authority or executive order pursuant to which the organization was created.
- (c) A brief description of the mission of, and results obtained by, the organization.

- (d) A brief description of the plans of the organization for the next 3 fiscal years.
- (e) A copy of the organization's code of ethics.
- (f) A copy of the organization's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).

This MOU is contingent upon the submission of this information by the Trust.

DOE/DVR shall make this information available to the public on the DVR website, and shall provide a link to the Trust's website if Trust maintains a website.

**XIV. MOU MANAGEMENT.**

The parties have identified the following individuals as MOU Managers. These individuals shall serve as liaison/contact regarding issues arising out of this MOU. Each notice, document or other communication which this MOU directs to be provided to a party shall be provided to:

For the Trust:

Susanne Homant, President and CEO  
 3320 Thomasville Road, Suite 200  
 Tallahassee, Florida 32308.

For DOE/DVR:

Wayarne Tolliver  
 4070 Esplanade Way, Suite 200  
 Tallahassee, Florida 32399-7016

If either party changes the individual designated as MOU Manager, written notice of that change shall be provided to the other MOU manager.

IN WITNESS WHEREOF, the parties hereto have executed this MOU on the date stated below.

**Florida Department of Education**

**The Florida Endowment Foundation for Vocational Rehabilitation, Inc., d/b/a The Able Trust**

By: *Pam Stewart*  
 Pam Stewart, Commissioner of Education

By: *Susanne F. Homant*  
 Susanne F. Homant, President & CEO

Date: 1/8/18

Date: 12/12/17