

**PDE MASTER STANDARD TERMS AND CONDITIONS**

1. **Scope of Agreement.** The Grantee will adhere to all Federal and State regulations and guidelines relating to the program funded under this agreement which constitute the conditions upon which these program funds are allocated. The Request for Proposals (RFP) and/or Program Guidelines issued by the Commonwealth of Pennsylvania (hereinafter referred to as “Commonwealth”) are hereby incorporated by reference and made a part of this agreement, and all the terms, conditions and provisions of the RFP and/or Program Guidelines (unless specifically modified by this agreement) will apply to this agreement the same as if they were expressly rewritten and included here at length.
2. **Grant Construction.** The provisions of this agreement shall be construed in accordance with the provisions of the laws of the Commonwealth.
3. **Independent Capacity of Grantee.** The parties hereto agree that the Grantee, and any agents and employees of the Grantee, in the performance of this agreement, shall act in an independent capacity and not as officers, employees or agents of the Commonwealth.
4. **Assignability.** This grant may not be assigned by the Grantee either in whole or in part.
5. **Subcontracts.** Subcontracting by the Grantee shall be prohibited unless permitted by individual program guidelines or regulations.
6. **Commonwealth Held Harmless.** The Grantee agrees to indemnify and hold harmless the Commonwealth from damages to property or injuries (including death) to any person and to indemnify and hold harmless the Commonwealth for any other losses, damages or expenses, incurred in connection with the work performed by the Grantee.
7. **Copyright Indemnity.** The Grantee shall defend any suit or proceeding brought against the Commonwealth on account of any alleged infringement of any copyright arising out of the performance of this grant, including all work, services, materials, reports, studies and computer programs provided by the Grantee. This is upon the condition that the Commonwealth shall provide prompt notification in writing of such suit or proceeding, full right, authorization and opportunity to conduct the defense thereof, and full information and all reasonable cooperation for the defense of same. As principles of governmental or public law are involved, the Commonwealth may participate in the defense of any such action. The Grantee shall pay all damages and costs awarded therein against the Commonwealth. If information and assistance are furnished by the Commonwealth at the Grantee's written request, it shall be only that within the Grantee's written authorization. If any of the materials, reports, studies or computer programs provided by the Grantee are in such suit or proceeding held to constitute infringement and the use or publication thereof is enjoined, the Grantee shall, at his own expense and at his option, either procure the right to publish or continue use of such infringing materials, reports, studies or computer programs, replace them with non-infringing items, or modify them so that they are no longer infringing. The obligations of the Grantee under this paragraph continue without time limit.
8. **Nondiscrimination/Sexual Harassment Clause.** The Grantee agrees:
  1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the grant agreement or any subgrant agreement, contract, or subcontract, the Grantee, a subgrantee, a contractor, a subcontractor, or any person acting on behalf of the Grantee shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
  2. The Grantee, any subgrantee, contractor or any subcontractor or any person on their behalf shall not in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any of its employees.

3. Neither the Grantee nor any subgrantee nor any contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the grant agreement, subgrant agreement, contract or subcontract.
4. Neither the Grantee nor any subgrantee nor any contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the *Public Employee Relations Act*, *Pennsylvania Labor Relations Act* or *National Labor Relations Act*, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
5. The Grantee, any subgrantee, contractor or any subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the grant services are performed, shall satisfy this requirement for employees with an established work site.
6. The Grantee, any subgrantee, contractor or any subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against any subgrantee, contractor, subcontractor or supplier who is qualified to perform the work to which the grant relates.
7. The Grantee, and each subgrantee, contractor and subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws and regulations relating to nondiscrimination and sexual harassment. The Grantee and each subgrantee, contractor and subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Grantee, any subgrantee, any contractor or any subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the granting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for the purpose of ascertaining compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause.
8. The Grantee, any subgrantee, contractor or any subcontractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subgrant agreement, contract or subcontract so that those provisions applicable to subgrantees, contractors or subcontractors will be binding upon each subgrantee, contractor or subcontractor.
9. The Granter's and each subgrantee's, contractor's and subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the grant agreement through the termination date thereof. Accordingly, the Grantee and each subgrantee, contractor and subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the grant agreement, it becomes aware of any actions or occurrences that would result in violation of these provisions.
10. The Commonwealth may cancel or terminate the grant agreement and all money due or to become due under the grant agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the granting agency may proceed with debarment or suspension and may place the Grantee, subgrantee, contractor, or subcontractor in the Contractor Responsibility File.

9. **Equal Opportunity for the Handicapped.**

- a. The Grantee agrees to abide by Sections 503 and 504 of the Rehabilitation Act of 1973, as amended (Public Law 93-112, 29 U.S.C. §§793 and 794, as amended) and implementing federal regulations. The Grantee assures that any benefits, services, or employment, available through the Grantee to the public by way of this grant's funds, shall not be denied handicapped persons who are otherwise qualified or eligible for the benefits, services, or employment available as a result of this grant.
- b. The Grantee will include the provisions of paragraph 9(a) above in every subgrant under this grant so that such provision binds each subgrantee.

10. **Covenant Against Contingent Fees.** The Grantee warrants that no person or selling agency has been employed or retained to solicit or secure this grant upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employes or bona fide established commercial or selling agencies maintained by the Grantee for the purpose of securing business. For breach or violation of this warranty, the Commonwealth shall have the right to annul this grant without liability or in its discretion to deduct from the grant price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

11. **Sensitive Information.** The Grantee shall not publish or otherwise disclose, except to the Commonwealth and except matters of public record, any information or data obtained hereunder from private individuals, organizations, or public agencies, in a publication whereby the information or data furnished by or about any particular person or establishment can be identified, except with the consent of such person or establishment. While this grant is in effect any documentation provided by the Grantee, if marked as proprietary information, shall be held by the Commonwealth to the best of its ability as confidential and protected from unauthorized disclosure. The Commonwealth shall have the right to reproduce, including a proprietary notice, or copy any portion of such documentation for its own use. All such copies will be treated as the property of the Grantee.

12. **Publication Rights.** All property rights, including publication rights, in the interim, draft and final reports and other documentation produced by the Grantee in connection with the work provided for under this grant, shall rest with the Commonwealth. The Grantee shall not publish any of the results of the work without the written permission of the Department of Education.

13. **Termination.** The Commonwealth has the right to terminate this grant for any of the following reasons:

- a. **TERMINATION FOR CONVENIENCE:** The Commonwealth may terminate this grant for its convenience if the Commonwealth determines termination to be in its best interest. The Grantee shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Grantee be entitled to recover loss of profits.
- b. **NONAPPROPRIATION:** The Commonwealth's obligations are contingent upon appropriation of funds for the grant purpose and the availability of sufficient funds to pay Grantee's full allocation. The Commonwealth shall have the right to terminate this grant because of the nonavailability of sufficient funds (state and/or federal) for the Commonwealth to pay for the services to be rendered under this grant, including but not limited to the reservation of funds.
- c. **TERMINATION FOR CAUSE:** The Commonwealth reserves the right to terminate this grant upon written notice for Grantee's nonperformance or inadequate performance.

14. **Disputes.** All questions or disputes arising between the parties hereto respecting any matter pertaining to this Agreement or any part thereof or any breach of contract arising thereunder shall be referred to the Pennsylvania Secretary of Education (under procedures which can be found at 1 Pa. Code Chapters 31, 33, and 35). Settlement of disputes under this provision must be prior to subsequent payments to Grantee. The foregoing provision notwithstanding, any dispute between the parties regarding matters governed by 34 C.F.R. 76.783 shall be resolved in accordance with the procedures in 34 C.F.R. 76.401(d).
15. **Record Retention.**
- a. The Grantee will create and maintain program and accounting records required by the Commonwealth and agrees that a program review may be conducted at any reasonable time by Federal and State personnel and by any other persons duly authorized by the Federal grantor agency or the Commonwealth. Review of program and accounting records will be conducted in accordance with applicable Federal and State policies and regulations.
  - b. The Grantee will maintain all statistical records of the program, as required by the Commonwealth, and will produce program narrative and statistical data at times prescribed, and on forms provided, by the Commonwealth.
  - c. All required records will be retained in accordance with the statute and regulations governing the individual grant program.
  - d. Regardless of any other applicable requirement, all records pertinent to this Agreement, including financial, statistical, property and participant, and supporting documentation shall be retained for a period of at least **six (6) years** from the date of submission of the final closeout report for this Agreement or until all audits are complete and findings on all claims have been completely resolved.
  - e. The Grantee shall make any grant application, program evaluation, periodic program plan, or report relating to any program operated under this Agreement available for public inspection upon request.
16. **Insurance.** The Grantee shall provide public liability, property damage and worker's compensation insurance, insuring as they may appear, the interest of all parties to this Agreement against any and all claims which may arise out of Grantee's operations under the terms of this Agreement. It is agreed that in the event any carrier of such insurance exercises cancellation, notice will be made immediately to the Commonwealth of such cancellation. The Grantee shall accept full responsibility for the payment of required premiums for worker's compensation, employment security, and social security, as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees who are performing services specified by the Agreement.
17. **Patents and Copyrights.** If, in the course of performance of services pursuant to this agreement, the Grantee produces patentable items, patent rights processes or inventions, said items, rights, processes, inventions or discoveries become the property of the Commonwealth.
- If, in the course of the performance of services pursuant to this agreement, the Grantee produces copyrightable material, the copyright rests with the Commonwealth. The Grantee shall provide public notice of the Commonwealth's copyright ownership by placing the following designation on all copies of the material: (1) the symbol c or the word "Copyright" or the abbreviation "Copr."; (2) the year of first publication; and (3) the name of the owner of the copyright. For example: "Copyright 1995 Commonwealth of Pennsylvania." The notice is to be affixed to all copies in such a manner and location as to give reasonable notice of the claim of the copyright.
- The Commonwealth shall have unrestricted authority to reproduce, distribute and use any submitted report, data, or material, and any software or modifications, and any associated documentation that is designed or developed and delivered to the Commonwealth under this Agreement.

18. **Grantee Integrity Provisions.** It is essential that those who seek to contract with the Commonwealth of Pennsylvania ("Commonwealth") observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

1. DEFINITIONS. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

a. "Affiliate" means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.

b. "Consent" means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.

c. "Contractor" means the individual or entity, that has entered into this contract with the Commonwealth.

d. "Contractor Related Parties" means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.

e. "Financial Interest" means either:

(1) Ownership of more than a five percent interest in any business; or

2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

f. "Gratuity" means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor's Code of Conduct. Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.

g. "Non-bid Basis" means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

2. In furtherance of this policy, Contractor agrees to the following:

a. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.

b. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.

c. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.

d. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.

e. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:

- (1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
- (2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
- (3) had any business license or professional license suspended or revoked;
- (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
- (5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

f. Contractor shall comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a).

g. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.

h. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

i. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.

j. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

19. The Commonwealth will not be obligated to pay for services or goods provided without a fully executed agreement.
20. **Offset Provision.** The Grantee agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Grantee or its subsidiaries to the Commonwealth against any payments due the Grantee under any contract with the Commonwealth.
21. **Contractor Responsibility Provisions.**

For the purpose of these provisions, the term Contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term Contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

1. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.

2. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.

3. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

4. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.

5. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

6. The Contractor may search the current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at <http://www.emarketplace.state.pa.us> and clicking the Debarment List tab.

22. **Provisions concerning the Americans with Disabilities Act.** During the terms of this agreement, the Grantee agrees as follows:

- a. Pursuant to federal regulations promulgated under the authority of THE AMERICANS WITH DISABILITIES ACT, 28 C.F.R. §35.101 et seq., the Grantee understands and agrees that no individual with an disability shall, on the basis of the disability, be excluded from participation in this agreement or from activities provided for under this agreement. As a condition of accepting and executing this agreement, the Grantee agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. §35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through grants with outside Grantees.
- b. The Grantee shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Grantee's failure to comply with the provisions of paragraph a., above.

23. **Integration Clause.** This agreement and attachments hereto constitute the entire agreement between the parties. No agent, representative, employee or officer of either the Commonwealth or the Grantee has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with this agreement, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of this agreement. Except as set forth in this agreement, no modifications, alterations, or changes to this agreement or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties. All such amendments or modifications will be made using the appropriate Commonwealth form.

- 24. Donation of Excess Prepared Food Clause.** The Grantee agrees to make a good faith effort to donate to a nonprofit organization for ultimate free distribution to needy individuals any apparently wholesome food or grocery products apparently fit for human consumption which are not consumed at the Commonwealth function. A good faith effort includes, but is not limited to, contacting one or more of the entities appearing on the referral listing maintained by the Department of Agriculture. Grantee is hereby put on notice that liability will not attach if the Grantee complies with 42 PA. C.S. §8338.
- 25. Automated Clearing House Payment**
- a. The Commonwealth will make payments to the recipient through ACH. Within 10 days of the grant award, the grantee must submit or must have already established its ACH information in the Commonwealth's Master Database. The grantee will also be able to enroll to receive remittance information via electronic addenda and email (e-Remittance). ACH and e-Remittance information is available at <https://www.budget.pa.gov/Services/ForVendors/Pages/Direct-Deposit-and-e-Remittance.aspx>.
  - b. The recipient must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth's ACH remittance advice to enable the recipient to properly apply the state agency's payment to the respective invoice or program.
  - c. It is the responsibility of the recipient to ensure that the ACH information contained in the Commonwealth's Master Database is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.
- 26. Right to Know Law**
- a. Grantee or Subgrantee understands that this agreement and records related to or arising out of the Grant Agreement are subject to requests made pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL"). For the purpose of these provisions, the term "the Commonwealth" shall refer to the granting Commonwealth agency.
  - b. If the Commonwealth needs the Grantee's or Subgrantee's assistance in any matter arising out of the RTKL related to this agreement, it shall notify the Grantee or Subgrantee using the legal contact information provided in the Grant Agreement. The Grantee or Subgrantee, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
  - c. Upon written notification from the Commonwealth that it requires Grantee's or Subgrantee's assistance in responding to a request under the RTKL for information related to this agreement that may be in Grantee's or Subgrantee's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), Grantee or Subgrantee shall:
    - (1) Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in Grantee's or Subgrantee's possession arising out of this agreement that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
    - (2) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this agreement.
  - d. If Grantee or Subgrantee considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that Grantee or Subgrantee considers exempt from production under the RTKL, Grantee or Subgrantee must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of Grantee or Subgrantee explaining why the requested material is exempt from public disclosure under the RTKL.

- e. The Commonwealth will rely upon the written statement from Grantee or Subgrantee in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, Grantee or Subgrantee shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.
- f. If Grantee or Subgrantee fails to provide the Requested Information within the time period required by these provisions, Grantee or Subgrantee shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of Grantee's or Subgrantee's failure, including any statutory damages assessed against the Commonwealth.
- g. The Commonwealth will reimburse Grantee or Subgrantee for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- h. Grantee or Subgrantee may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, Grantee or Subgrantee shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of Grantee's or Subgrantee's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, Grantee or Subgrantee agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.
- i. The Grantee's or Subgrantee's duties relating to the RTKL are continuing duties that survive the expiration of this agreement and shall continue as long as the Grantee or Subgrantee has Requested Information in its possession.

## 27. **AUDIT REQUIREMENTS.**

The Department of Education shall have the right to audit or investigate the provision of services and the expenditure of funds under this agreement and/or to ensure the Grantee's compliance with any provision of state or federal laws. Grantee will fully cooperate with any such audit or investigation, including without limitation by providing representatives of the Department with full and complete access to the facility and records of the Grantee and to interview any employees/students of the Grantee in connection with such audit or investigation.

The following applies to federal grant awards: Grantee must comply with all applicable federal and state grant requirements including The Single Audit Act Amendments of 1996; 2 CFR Part 200 as amended; and any other applicable law or regulation, and any amendment to such other applicable law or regulation that may be enacted or promulgated by the federal government.

If the Grantee is a local government or non-profit organization that expends \$750,000 or more in federal awards during its fiscal year, Grantee is required to provide the appropriate single or program specific audit in accordance with the provisions outlined in 2 CFR Part 200.501.

If Grantee expends total federal awards of less than the threshold established by 2 CFR 200.501, it is exempt from federal audit requirements for that year, but records must be available for review or audit by appropriate officials (or designees) of the federal agency, pass-through entity, and Government Accountability Office (GAO).

If Grantee is a for-profit entity, it is not subject to the auditing and reporting requirements of 2 CFR Part 200, Subpart F-Audit Requirements (Subpart F). However, the pass-through commonwealth agency is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The contract with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the contract and post-award audits. The post-award audits may be in the form of a financial audit in accordance with Government Auditing Standards, a single audit report or program-specific audit report in accordance with Subpart F. However, these post-award audits must be submitted directly to the affected commonwealth agency that provided the funding. Only single audit reports for local governmental and non-profit subrecipients are electronically submitted to the Federal Audit Clearinghouse.

In instances where a federal program-specific audit guide is available, the audit report package for a program-specific audit may be different and should be prepared in accordance with the appropriate audit guide, Government Auditing Standards, and Subpart F.

In addition to the requirements of Subpart F, commonwealth agencies may require that the single audit reporting packages include additional components in the SEFA, or supplemental schedules, as identified through the respective grant agreement.

Grantee must submit an electronic copy of the audit report package to the Federal Audit Clearinghouse, which shall include the elements outlined in Subpart F.

The subrecipients must send a copy of the confirmation from the Federal Audit Clearinghouse to the resource account RA-BOASinqlAudit@pa.gov.

Grantee is responsible for obtaining the necessary audit and securing the services of a certified public accountant or independent governmental auditor.

The commonwealth reserves the right for federal and state agencies or their authorized representatives to perform additional audits of a financial or performance nature, if deemed necessary by commonwealth or federal agencies. Any such additional audit work will rely on work already performed by the Grantee's auditor and the costs for any additional work performed by the federal or state agencies will be borne by those agencies at no additional expense to the Grantee.

Audit documentation and audit reports must be retained by the Grantee's auditor for a minimum of five years from the date of issuance of the audit report, unless Grantee's auditor is notified in writing by the commonwealth, the cognizant federal agency for audit, or the oversight federal agency for audit to extend the retention period. Audit documentation will be made available upon request to authorized representatives of the commonwealth, the cognizant federal agency for audit, the oversight federal agency for audit, the federal funding agency, or the GAO.

28. **PRO-CHILDREN ACT OF 1994.**

If this grant provides payments of federal funds to the Grantee, pursuant to the Pro-Children Act of 1994, 20 U.S.C. §6081 et. seq., the Grantee assures that:

- a. The Grantee prohibits smoking within any indoor facility owned or leased or granted for and utilized by the Grantee for the routine or regular kindergarten, elementary, or secondary education or library services to children; and
- b. The Grantee prohibits smoking within any indoor facility (or portion thereof) owned or leased or granted for by the Grantee for the provision by the Grantee of regular or routine health care or day care or early childhood development (Head Start) services to children or for the use of the employees of the Grantee who provide such services, except that this subsection shall not apply to:
  - (i) any portion of such facility that is used for inpatient hospital treatment of individuals dependent on, or addicted to, drugs or alcohol; and
  - (ii) any private residence.

29. **FEDERAL ASSURANCE CLAUSE.**

If this grant provides payments of federal funds to the Grantee, the following clause will apply: Grantee's activities under this grant shall be carried out on a nondiscriminatory basis in accordance with 34 CFR Parts 100, 104 and 106 and 45 CFR Part 90 (relating to nondiscrimination on the basis of race, color, national origin, sex, handicap or age), the Civil Rights Act of 1870, as amended (42 U.S.C. §§1981 et seq.) and the Federal Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), and shall be carried out in accordance with the Fair Labor Standards Act (29 U.S.C. §§201-219), Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (42 U.S.C. §4601 et. seq.), Equal Pay Act (29 U.S.C. §206), 34 CFR Parts 76, 80, 82, 98 and 99, and Office of Management and Budget Circulars A-87, A-102, A-110, A-128 and A-133, as applicable. Grantee certifies that it is acting in compliance with the provisions of 34 CFR Part 85 (relating to debarment and suspension), 20 U.S.C. §3224(a) (relating to drug and alcohol abuse prevention programs), and 31 U.S.C. §1352 (relating to lobbying). The above required certification shall be in such manner as required by applicable law. If Grantee is a school district, intermediate unit, area vocational-technical school, or other local educational agency or a state or public agency, it further assures that its employees and officials, whose principal employment is in connection with an activity funded with federal grant money, shall not engage in any political activity barred by the Hatch Act, 5 U.S.C. §§1501 et seq.

30. **GUN FREE SCHOOLS.**

As required by the Gun Free Schools Act, 20 U.S.C. §7151, the Grantee assures that, as a condition of receiving funds under this contract, it is complying with 24 P.S. §13-1317.2.

31. **LOBBYING CERTIFICATION.**

The following applies if this grant provides payment over \$100,000 of federal funds to the Grantee: The Grantee certifies, to the best of its knowledge and belief, that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the Grantee to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal grant, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant, grant, loan, or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal grant, loan, or cooperative agreement, the Grantee shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- c. The Grantee shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and grants under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed under 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure.

## 32. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT PROVISIONS

### A. Registration and Identification Information

Grantee must maintain current registration in the Central Grantee Registration ([www.ccr.gov](http://www.ccr.gov)) at all times during which they have active federal awards funded pursuant to this agreement. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number ([www.dnb.com](http://www.dnb.com)) is one of the requirements for registration in the Central Grantee Registration.

Grantee must provide its assigned DUNS number, and DUNS + 4 number if applicable, to the Commonwealth along with Grantee's return of the signed grant agreement. The Commonwealth will not process this grant until such time that Grantee provides this information.

### B. Primary Location

Grantee must provide to the Commonwealth the primary location of performance under the award, including the city, State, and zip+4. If performance is to occur in multiple locations, then Grantee must list the location where the most amount of the grant award is to be expended pursuant to this grant agreement.

Grantee must provide this information to the Commonwealth along with Grantee's return of the signed grant agreement. The Commonwealth will not process this grant until such time that Grantee provides this information.

### C. Compensation of Officers

Grantee must provide to the Commonwealth the names and total compensation of the five most highly compensated officers of the entity **if**—

(i) the entity in the preceding fiscal year received—

- (I) 80 percent or more of its annual gross revenues in Federal awards; and
- (II) \$25,000,000 or more in annual gross revenues from Federal awards: and

(ii) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

If the Grantee does not meet the conditions listed above, then it must specifically affirm to the Commonwealth that the requirements of this clause are inapplicable to the Grantee.

Grantee must provide information responding to this question along with Grantee's return of the signed grant agreement. The Commonwealth will not process this grant until such time that Grantee provides such information responding to this question.

33. **TRANSPORTATION, LODGING AND SUBSISTENCE.** Transportation, lodging and subsistence expenses incurred under this Agreement shall be reimbursed at state rates as per Management Directive 230.10

34. **SIGNATURES.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument. Execution by the Commonwealth shall not be complete unless the Agreement bears all the signature approvals of duly authorized representatives of each and every Commonwealth office designated on the signature page. This Agreement, agreements ancillary to this Agreement, and related documents to be entered into in connection with this Agreement will be considered duly executed and delivered by any party affixing its electronic signature to an electronic file of the contract via the Department's e-grants system, or when the signature of a party is delivered by facsimile transmission or delivered by scanned image (e.g. .pdf or .tiff file extension name) as an attachment to electronic mail (email).

35. **ADDITIONAL TERMS AND CONDITIONS.**

- A. The Grantee shall be liable for all disallowed costs, as determined during program audits or reviews, or as otherwise determined. The Grantee shall be liable for any payments made to, or for, any participants determined ineligible during program audits or reviews, or as otherwise determined.
- B. The Grantee shall administer grant equipment, materials and supplies purchased with the funds provided by this Grant Agreement and use the funds provided hereunder for the purposes stated in the Agreement and in accordance with the applicable Federal and state laws and regulations and the most current program guidelines issued by Commonwealth. Without limitation of the foregoing, Grantee shall comply with all federal regulations concerning the use of funds or property purchased with federal funds, including 34 C.F.R. §§74.31 through 74.37 (concerning the management and disposition of property charged to a project supported by a Federal award).
- C. The Grantee and the Commonwealth recognize that in actual economic practice, overcharges by the Grantee's suppliers resulting from violations of state and Federal antitrust laws are in fact borne by the Commonwealth. As part of the consideration for the award of this agreement, and intending to be legally bound, the Grantee assigns to the Commonwealth all right, title and interest in and to any claims the Grantee now has or may hereafter acquire under state or Federal antitrust laws relating to the goods or services which are the subject of this agreement.
- D. Environmental Protection: In carrying out this Agreement, the Grantee shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations. (Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended; the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, as amended; and the Dam Safety and Encroachments Act of November 26, 1978, P.L. 1375, as amended) (This clause does not apply to any project that does not have an environmental component).
- E. In addition to any other notice required hereunder, the Grantee shall notify the Department's Division of Procurements and Grants in the event of Grantee debarment or suspension by any agency or department of the federal government or by any other state.