

**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.** During the term of this grant, the Grantee agrees as follows:
  - a. 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, by reason of gender, race, creed, or color, discriminate against any citizen of this commonwealth who is qualified and available to perform the work to which the employment relates.
  - b. The Grantee, any subgrantee, contractor or any subcontractor or any person on their behalf shall not in any manner discriminate against or intimidate any of its employees on account of gender, race, creed, or color.
  - c. The Grantee, any subgrantee, contractor or any subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

- d. The Grantee, any subgrantee, contractor or any subcontractor shall not discriminate by reason of gender, race, creed, or color against any subgrantee, contractor, subcontractor or supplier who is qualified to perform the work to which the contracts relates.
- e. The Grantee, any subgrantee, any contractor or any subcontractor shall, within the time periods requested by the commonwealth, furnish all necessary employment documents and records and permit access to their books, records, and accounts by the granting agency and the Bureau of Minority and Women Business Opportunities (BMWBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. Within fifteen (15) days after award of any grant, the Grantee shall be required to complete, sign and submit Form STD-21, the "Initial Contract Compliance Data" form. Grantees who have fewer than five employees or whose employees are all from the same family or who have completed the STD-21 form within the past 12 months may, within the 15 days, request an exemption from the STD-21 form from the granting agency.
- f. 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.
- g. 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 grant process.

In furtherance of this policy, Grantee agrees to the following:

- a. Grantee 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 Grantee or that govern contracting with the Commonwealth.
- b. Grantee shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Grantee employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all Grantee employees.
- c. Grantee, its affiliates, agents and employees shall not influence, or attempt to influence, any Commonwealth employee to breach the standards of ethical conduct for Commonwealth employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; and the [\*Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.\*](#), or to breach any other state or federal law or regulation.
- d. Grantee, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person at the direction or request of any Commonwealth official or employee.
- e. Grantee, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person, the acceptance of which would violate the [\*Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.\*](#) or any statute, regulation, statement of policy, management directive or any other published standard of the Commonwealth.
- f. Grantee, its affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any Commonwealth official or employee.
- g. Grantee, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in the contract.
- h. Grantee shall not have a financial interest in any other Grantee, subGrantee, or supplier providing services, labor, or material on this project, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Grantee's financial interest prior to Commonwealth execution of the contract. Grantee 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 Grantee's submission of the contract signed by Grantee.

- i.** Grantee, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Grantee under this contract without the prior written approval of the Commonwealth, except as required by the *Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104*, or other applicable law or as otherwise provided in this contract. Any information, documents, reports, data, or records secured by Grantee from the Commonwealth or a third party in connection with the performance of this contract shall be kept confidential unless disclosure of such information is:
1. Approved in writing by the Commonwealth prior to its disclosure; or
  2. Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior Commonwealth approval; or
  3. Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
  4. Necessary for purposes of Grantee's internal assessment and review; or
  5. Deemed necessary by Grantee in any action to enforce the provisions of this contract or to defend or prosecute claims by or against parties other than the Commonwealth; or
  6. Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain: or
  7. Otherwise required by law.
- j.** Grantee certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the Commonwealth agency contracting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:
1. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
  2. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Grantee or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:
    - i. obtaining;
    - ii. attempting to obtain; or
    - iii. performing a public contract or subcontract.

Grantee's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.
  3. Violation of federal or state antitrust statutes.
  4. Violation of any federal or state law regulating campaign contributions.
  5. Violation of any federal or state environmental law.
  6. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.

7. Violation of the *Act of June 2, 1915 (P.L.736, No. 338)*, known as the *Workers' Compensation Act, 77 P.S. 1 et seq.*
8. Violation of any federal or state law prohibiting discrimination in employment.
9. Debarment by any agency or department of the federal government or by any other state.
10. Any other crime involving moral turpitude or business honesty or integrity.

Grantee acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause upon such notification or when the Commonwealth otherwise learns that Grantee has been officially notified, charged, or convicted.

- k. If this contract was awarded to Grantee on a non-bid basis, Grantee must, (as required by *Section 1641* of the *Pennsylvania Election Code*) file a report of political contributions with the Secretary of the Commonwealth on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions known to Grantee by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:
  1. Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed an aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or
  2. Any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

To obtain a copy of the reporting form, Grantee shall contact the Bureau of Commissions, Elections and Legislation, Division of Campaign Finance and Lobbying Disclosure, Room 210, North Office Building, Harrisburg, PA 17120.

- l. Grantee shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S §13A01 et seq.*, and the regulations promulgated pursuant to that law. Grantee employee activities prior to or outside of formal Commonwealth procurement/grant communication protocol are considered lobbying and subjects the Grantee employees to the registration and reporting requirements of the law. Actions by outside lobbyists on Grantee's behalf, no matter the procurement/grant stage, are not exempt and must be reported.
- m. When Grantee has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these 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, Grantee shall immediately notify the Commonwealth contracting officer or Commonwealth Inspector General in writing.
- n. Grantee, by submission of its bid or application/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 Grantee integrity provisions in connection with the submission of the bid or application/proposal, during any contract negotiations or during the term of the contract.
- o. Grantee shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Grantee non-compliance with these provisions. Grantee agrees to make identified Grantee employees available for interviews at reasonable times and places. Grantee, upon the inquiry or request of the Office of 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 Inspector General to Grantee's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Grantee's business or financial records, documents or files of any type or form that refers to or concern this contract.
- p. For violation of any of these Grantee Integrity Provisions, the Commonwealth may terminate this and any other contract with Grantee, 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 Grantee to complete performance under this contract, and debar and suspend Grantee 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.

q. For purposes of these Grantee Integrity Provisions, the following terms shall have the meanings found in this Paragraph q.

1. “Confidential information” means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to Grantee from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through a act or omission of Grantee; or e) has not been independently developed by Grantee without the use of confidential information of the Commonwealth.
2. 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 pre-qualification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this contract.
3. “Grantee” means the individual or entity that has entered into this contract with the Commonwealth, including those directors, officers, partners, managers, and owners having more than a five percent interest in Grantee.
4. “Financial interest” means:
  - (a) Ownership of more than a five percent interest in any business; or
  - (b) Holding a position as an officer, director, trustee, partner, employee, or position of management.
5. “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.
6. “Immediate family” means a spouse and any unemancipated child.
7. “Non-bid basis” means a contract awarded or executed by the Commonwealth with Grantee without seeking bids or proposals from any other potential bidder or offeror.
8. “Political contribution” means any payment, gift, subscription, assessment, contract, services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

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 obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

Department of General Services  
Office of Chief Counsel  
603 North Office Building  
Harrisburg, PA 17125  
Telephone No: (717) 783-6472  
FAX No: (717) 787-9138

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 recipient must submit or must have already submitted its ACH and electronic addenda information, if desired, to the commonwealth's Payable Service Center, Vendor Data Management Unit at 717-214-0140 (FAX) or by mail to the Office of Comptroller Operations, Bureau of Payable Services, Payable Service Center, Vendor Data Management Unit, 555 Walnut Street – 9<sup>th</sup> Floor, Harrisburg, PA 17101.
  - 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 Central Vendor Master File 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 Grantee must comply with all federal and state audit requirements including, without limitation: the Single Audit Act, as amended (31 U.S.C. § 7501 *et. seq.*); Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments and Non-Profit Organizations, as amended; and any other applicable law or regulation and any amendment to such other applicable law or regulation which may be enacted or promulgated by the federal government. If the Grantee is a local government or non-profit organization and expends total federal awards of \$500,000 or more during its fiscal year, received either directly from the federal government or indirectly from a recipient of federal funds, the Grantee is required to have an audit made in accordance with the provisions of OMB Circular A-133.

If the Grantee is a for-profit organization and expends total federal awards of \$500,000 or more during its fiscal year, received either directly from the federal government or indirectly from a recipient of federal funds, the Grantee is required to have a program-specific audit made in accordance with the provisions of OMB Circular A-133, and in accordance with the laws and regulations governing the programs in which it participates.

If the Grantee expends total federal awards of less than \$500,000 during its fiscal year, it is exempt from these audit requirements, but is required to maintain auditable records of federal awards and any state funds which supplement such awards, and to provide access to such records by federal and state agencies or their designees.

## 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.