



## **NORTHWEST TRI-COUNTY IU-5 MASTER STANDARD TERMS AND CONDITIONS**

1. **Scope of Agreement.** The Contractor 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 Contractor.** The parties hereto agree that the Contractor, and any agents and employees of the Contractor, in the performance of this agreement, shall act in an independent capacity and not as officers, employees or agents of the Northwest Tri-County Intermediate Unit 5 (hereinafter referred to as "Intermediate Unit").
4. **Assignability.** This grant may not be assigned by the Contractor either in whole or in part.
5. **Subcontracts.** Subcontracting by the Contractor shall be prohibited unless permitted by individual program guidelines or regulations.
6. **Intermediate Unit Held Harmless.** The Contractor agrees to indemnify and hold harmless the Intermediate Unit from damages to property or injuries (including death) to any person and to indemnify and hold harmless the Intermediate Unit for any other losses, damages or expenses, incurred in connection with the work performed by the Contractor.
7. **Copyright Indemnity.** The Contractor shall defend any suit or proceeding brought against the Intermediate Unit 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 Contractor. This is upon the condition that the Intermediate Unit 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 Intermediate Unit may participate in the defense of any such action. The Contractor shall pay all damages and costs awarded therein against the Intermediate Unit. If information and assistance are furnished by the Intermediate Unit at the Contractor's written request, it shall be only that within the Contractor's written authorization. If any of the materials, reports, studies or computer programs provided by the Contractor are in such suit or proceeding held to constitute infringement and the use or publication thereof is enjoined, the Contractor 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 Contractor under this paragraph continue without time limit.
8. **Nondiscrimination/Sexual Harassment Clause.** The Contractor agrees:
  - 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 Contractor, a subcontractor, or any person acting on behalf of the Contractor 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.

- b. The 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.
- c. Neither the 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.
- d. Neither the 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.
- e. The 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.
- f. The 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 subcontractor or supplier who is qualified to perform the work to which the grant relates.
- g. The Contractor and each subcontractor represent 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 Contractor and each subcontractor further represent 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 Contractor or any subcontractor shall, upon request and within the time periods requested by the Intermediate Unit, 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.
- h. The Contractor or any subcontractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontractor agreement, contract or subcontract so that those provisions applicable to Contractor or subcontractors will be binding upon each additional contractor or subcontractor.
- i. The Contractor's and each 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 Contractor and each subcontractor shall have an obligation to inform the Intermediate Unit 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.

- j. The Intermediate Unit 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 Contractor or subcontractor in the Contractor Responsibility File.

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

- a. The Contractor agrees to abide by Sections 503 and 504 of the Rehabilitation Act of 1973, as amended (Public Law 93112, 29 U.S.C. §§793 and 794, as amended) and implementing federal regulations. The Contractor assures that any benefits, services, or employment, available through the Contractor 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 Contractor will include the provisions of paragraph 9(a) above in every subgrant under this grant so that such provision binds each subcontractor.

**10. Covenant Against Contingent Fees.** The Contractor 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 employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Intermediate Unit 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 Contractor shall not publish or otherwise disclose, except to the Intermediate Unit 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 contract is in effect any documentation provided by the Contractor, if marked as proprietary information, shall be held by the Intermediate Unit to the best of its ability as confidential and protected from unauthorized disclosure. The Intermediate Unit 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 Contractor

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

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

- a. **TERMINATION FOR CONVENIENCE:** The Intermediate Unit may terminate this grant for its convenience if the Intermediate Unit determines termination to be in its best interest. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover loss of profits.
- b. **NONAPPROPRIATION:** The Intermediate Unit's obligations are contingent upon appropriation of funds for the grant purpose and the availability of sufficient funds to pay Contractor's full allocation. The Intermediate Unit shall have the right to terminate this grant because of the nonavailability of

sufficient funds (state and/or federal) for the Intermediate Unit 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 Intermediate Unit reserves the right to terminate this grant upon written notice for Contractor's nonperformance or inadequate performance.

**14. Termination of Federal Award.** The Federal award may be terminated in whole or in part as follows:

- a. **FAILURE TO COMPLY:** The Federal awarding agency or Intermediate Unit may terminate the grant if the Contractor fails to comply with the terms and conditions of a Federal award as outlined in 2 CFR § 200.1.
- b. **PROGRAM GOALS NOT ACCOMPLISHED:** The Federal awarding agency or Intermediate Unit may terminate the grant, to the greatest extent authorized by law, if the award no longer effectuates the program goals or agency priorities.
- c. **TERMINATION BY PARTIES' CONSENT:** The contract may be terminated by the Federal awarding agency or Intermediate Unit with the consent of the Contractor, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.
- d. **TERMINATION BY WRITTEN NOTIFICATION:** The grant may be terminated by the Contractor upon sending to the Federal awarding agency or Intermediate Unit written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or the Intermediate Unit determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or Intermediate Unit may terminate the Federal award in its entirety.
- e. **TERMINATION PURSUANT TO PROVISIONS IN AWARD:** The Federal awarding agency or Intermediate Unit may terminate the grant pursuant to the termination provisions included in the Federal award.

**15. 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 Contractor. 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).

**16. Record Retention.**

- a. The Contractor will create and maintain program and accounting records required by the Intermediate Unit 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 Intermediate Unit. Review of program and accounting records will be conducted in accordance with applicable Federal and State policies and regulations.
- b. The Contractor will maintain all statistical records of the program, as required by the Intermediate Unit, and will produce program narrative and statistical data at times prescribed, and on forms provided, by the Intermediate Unit.

- 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 Contractor 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.

**17. Insurance.** The Contractor 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 Contractor'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 Intermediate Unit of such cancellation. The Contractor 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.

**18. Patents and Copyrights.** If, in the course of performance of services pursuant to this agreement, the Contractor produces patentable items, patent rights processes or inventions, said items, rights, processes, inventions or discoveries become the property of the Intermediate Unit.

If, in the course of the performance of services pursuant to this agreement, the Contractor produces copyrightable material, the copyright rests with the Intermediate Unit. The Contractor shall provide public notice of the Intermediate Unit's copyright ownership by placing the following designation on all copies of the material: (1) the symbol © 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 Northwest Tri-County Intermediate Unit 5." 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 Intermediate Unit 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 Intermediate Unit under this Agreement.

**19. Rights to Inventions Made Under a Contract or Agreement.** If the federal award meets the definition of "funding Agreement" under 37 CFR §401.2(a) and the Contractor or Subcontractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental. Development, or research work under that "funding agreement," the Contractor or subcontractor must comply with the requirements of 37 CFR Part 401 "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the Intermediate Unit.

**20. Contractor Integrity Provisions.** It is essential that those who seek to contract with the Northwest Tri-County Intermediate Unit ("Intermediate Unit") observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Intermediate Unit contracting and procurement process.

- a. DEFINITIONS. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:
- (1) "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.
  - (2) "Consent" means written permission signed by a duly authorized officer or employee of the Intermediate Unit, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Intermediate Unit shall be deemed to have consented by virtue of the execution of this contract.
  - (3) "Contractor" means the individual or entity, that has entered into this contract with the Intermediate Unit.
  - (4) "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.
  - (5) "Financial Interest" means either:
    - (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 holding any position of management.
  - (6) "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.
  - (7) "Non-bid Basis" means a contract awarded or executed by the Intermediate Unit with Contractor without seeking bids or proposals from any other potential bidder or offeror.
- b. In furtherance of this policy, Contractor agrees to the following:
- (1) 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 Intermediate Unit.
  - (2) 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 Intermediate Unit and Intermediate Unit 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.
  - (3) 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.

- (4) 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 Intermediate Unit in writing and the Intermediate Unit consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Intermediate Unit 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.
- (5) Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:
  - (A) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
  - (B) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
  - (C) had any business license or professional license suspended or revoked;
  - (D) 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
  - (E) 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 Intermediate Unit 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 Intermediate Unit in writing if at any time during the term of the contract if becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Intermediate Unit 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.

- (6) 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).
- (7) 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 Intermediate Unit officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Intermediate Unit contracting officer or the Office of the State Inspector General in writing.
- (8) 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 Intermediate Unit in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Intermediate Unit 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 Intermediate Unit 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.

- (9) Contractor shall cooperate with the IU or any state or federal Office of Inspector General in its investigation of any alleged 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 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 Intermediate Unit and any such subcontractor, and no third party beneficiaries shall be created thereby.
- (10) For violation of any of these Contractor Integrity Provisions, the Intermediate Unit 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 Intermediate Unit. 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 Intermediate Unit may have under law, statute, regulation, or otherwise.

**21.** The Intermediate Unit will not be obligated to pay for services or goods provided without a fully executed agreement.

**22. Offset Provision.** The Contractor agrees that the Intermediate Unit may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Intermediate Unit against any payments due the Contractor under any contract with the Intermediate Unit.

### **23. 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, subcontractor 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 Northwest Tri- County Intermediate Unit 5 (Intermediate Unit). The term contractor includes a permittee, licensee, or any agency, subdivision, instrumentality, authority, or other entity in the Intermediate Unit.

- a. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Intermediate Unit, 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 Intermediate Unit or any related 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.



- b. 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 of Pennsylvania 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.
- c. 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 Intermediate Unit if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth of Pennsylvania obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth of Pennsylvania, 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.
- d. The failure of the Contractor to notify the Intermediate Unit 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.
- e. The Contractor agrees to reimburse the Intermediate Unit for the reasonable costs of investigation incurred by the Intermediate Unit for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Intermediate Unit 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.
- f. 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

**24. Provisions concerning the Americans with Disabilities Act.** During the terms of this agreement, the Contractor 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 Contractor 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 Contractor 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 Contractors.
- b. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Northwest Tri-County Intermediate Unit from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Northwest Tri-County Intermediate Unit as a result of the Contractor's failure to comply with the provisions of paragraph a., above.

**25. Integration Clause.** This agreement and attachments hereto constitute the entire agreement between the parties. No agent, representative, employee or officer of either the Intermediate Unit or the Contractor 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 form.

**26. Donation of Excess Prepared Food Clause.** The Contractor 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 Intermediate Unit 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. Contractor is hereby put on notice that liability will not attach if the Contractor complies with 42 PA. C.S. §8338.

**27. Automated Clearing House Payment**

- a. The Intermediate Unit 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.
- b. The recipient must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Intermediate Unit's ACH remittance advice to enable the recipient to properly apply the payment to the respective invoice or program.
- c. It is the responsibility of the recipient to ensure that the ACH information possessed by the Intermediate Unit is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

**28. Right to Know Law**

- a. Contractor or subcontractor 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").
- b. If the Intermediate Unit needs the Contractor's or Subcontractor's assistance in any matter arising out of the RTKL related to this agreement, it shall notify the Contractor or subcontractor using the legal contact information provided in the Grant Agreement. The Contractor or subcontractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Intermediate Unit.
- c. Upon written notification from the Intermediate Unit that it requires Contractor's or subcontractor's assistance in responding to a request under the RTKL for information related to this agreement that may be in Contractor's or subcontractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), Contractor or subcontractor shall:
  - (1) Provide the Intermediate Unit, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in Contractor's or subcontractor's possession arising out of this agreement that the Intermediate Unit reasonably believes is Requested Information and may be a public record under the RTKL; and

- (2) Provide such other assistance as the Intermediate Unit may reasonably request, in order to comply with the RTKL with respect to this agreement.
- d. If Contractor or subcontractor 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 Contractor or subcontractor considers exempt from production under the RTKL, Contractor or subcontractor must notify the Intermediate Unit and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of Contractor or subcontractor explaining why the requested material is exempt from public disclosure under the RTKL.
- e. The Intermediate Unit will rely upon the written statement from Contractor or subcontractor in denying a RTKL request for the Requested Information unless the Intermediate Unit 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, Contractor or subcontractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Intermediate Unit's determination.
- f. If Contractor or subcontractor fails to provide the Requested Information within the time period required by these provisions, Contractor or subcontractor shall indemnify and hold the Intermediate Unit harmless for any damages, penalties, costs, detriment or harm that the Intermediate Unit may incur as a result of Contractor's or subcontractor's failure, including any statutory damages assessed against the Intermediate Unit.
- g. The Intermediate Unit will reimburse Contractor or subcontractor 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. Contractor or subcontractor may file a legal challenge to any Intermediate Unit decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, Contractor or subcontractor shall indemnify the Intermediate Unit for any legal expenses incurred by the Intermediate Unit as a result of such a challenge and shall hold the Intermediate Unit harmless for any damages, penalties, costs, detriment or harm that the Intermediate Unit may incur as a result of Contractor's or subcontractor's failure, including any statutory damages assessed against the Intermediate Unit, regardless of the outcome of such legal challenge. As between the parties, Contractor or subcontractor agrees to waive all rights or remedies that may be available to it as a result of the Intermediate Unit's disclosure of Requested Information pursuant to the RTKL.
- i. The Contractor's or subcontractor's duties relating to the RTKL are continuing duties that survive the expiration of this agreement and shall continue as long as the Contractor or subcontractor has Requested Information in its possession.

## **29. 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. Contractor 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 Contractor and to interview any employees/students of the Contractor 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.

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

The Intermediate Unit 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.

### **30. PRO-CHILDREN ACT OF 1994.**

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

- a. The Contractor prohibits smoking within any indoor facility owned or leased or granted for and utilized by the Contractor for the routine or regular kindergarten, elementary, or secondary education or library services to children; and
- b. The Contractor prohibits smoking within any indoor facility (or portion thereof) owned or leased or granted for by the Contractor for the provision by the Contractor 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 Contractor who provide such services, except that this subsection shall not apply to:
  - (1) any portion of such facility that is used for inpatient hospital treatment of individuals dependent on, or addicted to, drugs or alcohol; and
  - (2) any private residence.

### **31. FEDERAL ASSURANCE CLAUSE.**

If this grant provides payments of federal funds to the Contractor, the following clause will apply: Contractor'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. Contractor 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.

### **32. DAVIS-BACON ACT.**

If this contract involves a construction contract in excess of \$2,000, the following clause will apply: Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor is required to pay wages not less than once a week. The Intermediate Unit is responsible for placing a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract will be conditioned upon the acceptance of the wage determination. The Intermediate Unit is required to report all suspected or reported violations to the federal awarding agency. All contracts must contain a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States."). The Act provides that each Contractor or subcontractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any

part of the compensation to which he or she is otherwise entitled. The Intermediate Unit is required to report all suspected or reported violations to the federal awarding agency.

**33. GUN FREE SCHOOLS.**

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

**34. LOBBYING CERTIFICATION.**

The following applies if this grant provides payment over \$100,000 of federal funds to the Contractor: The Contractor 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 Contractor 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 Contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

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

Contractor must provide information responding to this question along with Contractor's return of the signed agreement. The Intermediate Unit will not process this contract until such time that Contractor provides such information responding to this question.

**35. 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

**36. 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 Intermediate Unit shall not be complete unless the Agreement bears all the signature approvals of duly authorized representatives of each and every Intermediate Unit 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, 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).

**37. ADDITIONAL TERMS AND CONDITIONS.**

- a. The Contractor shall be liable for all disallowed costs, as determined during program audits or reviews, or as otherwise determined. The Contractor 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 Contractor 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, Contractor 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 Contractor and the Intermediate Unit recognize that in actual economic practice, overcharges by the Contractor's suppliers resulting from violations of state and Federal antitrust laws are in fact borne by the Intermediate Unit. As part of the consideration for the award of this agreement, and intending to be legally bound, the Contractor assigns to the Intermediate Unit all right, title and interest in and to any claims the Contractor 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. The Agreement and any subagreements entered into by Contractor or the Intermediate Unit must include the following parts:
  - (1) Cover sheet that identifies:
    - (A) Identities of the parties involved;
    - (B) Term of the contract;
    - (C) Summary of the scope of work to be completed;
    - (D) Payment terms; and
    - (E) Signatures of both parties.
  - (2) Appendices including:
    - (A) The Intermediate Unit Standard Terms and Conditions;
    - (B) Detailed scope of the work to be completed, which shall be updated annually for a multi-year contract;
    - (C) Payment schedule and any associated terms and conditions; and
    - (D) Escape Clause.
- e. Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- f. Environmental Protection: In carrying out this Agreement, the Contractor 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; the Clean Air Act of 1970; the Federal Water Pollution Control Act of 1948, 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).

- g. In addition to any other notice required hereunder, the Contractor shall notify the Intermediate Unit in the event of Contractor debarment or suspension by any agency or department of the federal government or by any other state.

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