

PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY

SPECIAL TERMS AND CONDITIONS

These Special Terms and Conditions are to be read in conjunction with the [Identify Agreement] (the “Agreement”) between the Pennsylvania Higher Education Assistance Agency (“PHEAA”) and [redacted] (“Contractor”), including without limitation any attachments, exhibits or other supplements incorporated into the Agreement. In the event of a conflict between these Special Terms and Conditions and any provision of the Agreement, these Special Terms and Conditions shall prevail. The terms “Government” or “Federal Government” as used herein, each means the United States Government or any of its agencies or instrumentalities, including without limitation the Department of Education.

- I. Contractors Debarred, Suspended or Proposed for Debarment.** Contractor represents, warrants and certifies that neither Contractor nor any of its principals are currently under suspension or debarment, or proposed for suspension or debarment, by any state or by the Federal Government. If Contractor is subsequently suspended, debarred, proposed for suspension or debarment, or enters into a subcontract under this Agreement with any subcontractor who are currently, or who subsequently become, suspended, debarred or proposed for suspension or debarment, Contractor shall provide prompt written notice thereof to PHEAA, and PHEAA shall have the right to either (i) require Contractor to terminate such subcontracts or (ii) terminate this Agreement.
- II. Changes.** PHEAA may order changes within the general scope of the Agreement at any time by written notice to Contractor, including without limitation, the description of services to be performed, time or place of performance, or any other change required due to a change made to a contract between PHEAA and the Federal Government. Contractor shall comply with a notice of change upon receipt. Contractor shall be compensated for additional costs incurred as the result of such order and shall credit PHEAA for any savings, as determined by written agreement of the parties. Contractor must assert a right to a compensation adjustment under this clause by providing written notice of its request for adjustment within 30 days of receipt of a written change order. Nothing in this clause shall excuse Contractor from proceeding with the contract as modified by any such change order.
- III. Termination for Convenience.** Notwithstanding any other provision of this Agreement, PHEAA may immediately terminate this Agreement, in whole or in part, to the extent any item or service provided by Contractor is related to a contract between PHEAA and the Federal Government, and such contract between PHEAA and the Federal Government is terminated in whole or in part. In the event of such termination, PHEAA shall be liable only for work performed prior to termination.
- IV. Security Clearances.** Contractor understands and agrees that each of its employees, agents or contractors may be required to obtain a Federal security clearance prior to beginning work at a PHEAA location or accessing confidential, proprietary or other restricted or sensitive information from PHEAA. PHEAA may at its sole discretion refuse to allow any of Contractor’s employees, agents or contractors who do not obtain any required security clearance to perform any services under this Agreement.
- V. Self Reporting of Violations.** Contractor shall promptly refer to PHEAA and to an appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee or subcontractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).
- VI. CONFLICTS OF INTEREST.**
 - (a) Contractor and any subcontractor, employee or consultant of Contractor, by signing the Agreement, certifies that, to the best of its knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational or personal conflict of interest, (see 48 C.F.R. subpart 9.5, for organizational conflicts of interest),

or apparent conflict of interest, for the organization or any of its staff, and that Contractor and any subcontractor, employee or consultant has disclosed all such relevant information if such a conflict of interest appears to exist to a reasonable person with knowledge of the relevant facts (or if such a person would question the impartiality of the Contractor, subcontractor, employee or consultant). Conflicts may arise in the following situations:

- (1) Unequal access to information – a potential contractor, subcontractor, employee or consultant has access to non-public information through its performance on a Federal Government contract.
- (2) Biased ground rules – a potential contractor, subcontractor, employee or consultant has worked, in one Federal Government contract, or program, on the basic structure or ground rules of another Federal Government contract.
- (3) Impaired objectivity – a potential contractor, subcontractor, employee or consultant, or member of their immediate family (spouse, parent or child) has financial or other interests that would impair, or give the appearance of impairing, impartial judgment in the evaluation of Government programs, in offering advice or recommendations, or in providing technical assistance or other services to recipients of Federal funds.

Contractor must provide the disclosure described above on any actual, potential or apparent conflict of interest regardless of its opinion that such a conflict would not impair their objectivity. In a case in which an actual, potential or apparent conflict is disclosed, PHEAA or the Federal Government will take appropriate actions to eliminate or address the actual, potential or apparent conflict, including but not limited to mitigating or neutralizing the conflict, when appropriate, through such means as ensuring a balance of views, disclosure with the appropriate disclaimers, or by restricting or modifying the work to be performed to avoid or reduce the conflict. In this clause, the term “potential conflict” means reasonably foreseeable conflict of interest.

- (b) Contractor, and any subcontractor, employee or consultant, agrees that if impaired objectivity, or an actual, potential or apparent conflict of interest is discovered after the award is made, it will make a full disclosure in writing to PHEAA. This disclosure shall include a description of actions Contractor has taken or proposes to take, after consultation with PHEAA, to avoid, mitigate, or neutralize the actual, potential or apparent conflict.
- (c) PHEAA may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid the appearance of a conflict of interest. If Contractor was aware of a potential conflict of interest prior to award or discovered an actual, potential or apparent conflict of interest after award and did not disclose or misrepresented relevant information to PHEAA, PHEAA may terminate the contract for default, and PHEAA or the Federal Government may pursue such other remedies as may be permitted by law or this contract. These remedies include imprisonment for up to five years for violation of 18 U.S.C. § 1001, fines of up to \$5,000 for violation of 31 U.S.C. § 3802, as well as suspension or debarment from contracting with the Commonwealth of Pennsylvania or Federal Government. Contractor may also be required to reimburse PHEAA or the Government for costs incurred arising from activities related to conflicts of interest. An example of such costs would be those incurred in processing Freedom of Information Act requests related to a conflict of interest.
- (d) In cases where remedies short of termination are applied, Contractor or any subcontractor, employee or consultant agrees to eliminate the conflict of interest, or mitigate it to the satisfaction of PHEAA and the Government.
- (e) Contractor shall insert in any subcontract or consultant agreement hereunder provisions which shall conform substantially to the language of this clause including specific mention of potential remedies and this paragraph (e).

VII. Incorporation of Federal Acquisition Regulations by Reference. The following FARs are incorporated by reference as if fully set forth herein, except that the term “Contracting Officer”, wherever it appears in the FARs, shall be replaced by “PHEAA,” the terms “Contractor” or “Consulting Firm” shall mean [REDACTED], including directors, officers, partners, managers, employees, agents and owners of more than five percent (5%)

financial interest in Contractor, and the terms “Government” or “Federal Government” each means the United States Government or any of its agencies or instrumentalities, including without limitation the Department of Education.

<u>Paragraph</u>	<u>Title</u>
52.203-13	Contractor Code of Business Ethics and Conduct (Dec 2008) ¹
52.224-1	Privacy Act Notification (Apr 1984) ²
52.224-2	Privacy Act (Apr 1984) ³
52.203-15	Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (Mar 2009)
52.215-2	Audit and Records – Negotiation – Alternate I (Mar 2009)
52.219-8	Utilization of Small Business Concerns (May 2004) ⁴
52.222-26	Equal Opportunity (Mar 2007)
52.222-35	Equal Opportunity for Veterans (Sep 2006) ⁵
52.222-36	Affirmative Action for Workers with Disabilities (Jun 1998) ⁶
52.222-39	Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) ⁷
52.222-41	Service Contract Act of 1965 (Nov 2007)
52.222-50	Combating Trafficking in Persons (Aug 2007)
52.222-54	Employment Eligibility Verification (Jan 2009) ⁸
52.245-1	Government Property (Jun 2007) ⁹

VIII. Reporting Executive Compensation and First-Tier Subcontract Awards.¹⁰

(a) Pursuant to FAR (FAR) 52.204-10 (July 2010), PHEAA must report information regarding certain first-tier subcontracts to the Government. Contractor acknowledges this obligation and agrees to provide the information listed in this clause no later than ten (10) after execution of the Agreement:

- (1) Unique identifier (DUNS Number) for the Contractor and for the Contractor’s parent company, if applicable.
- (2) Contractor’s physical address (street address, city, state, country, nine-digit zip code) as well as the congressional district in which this address is located.
- (3) Contractor’s primary performance location (street address, city, state, country, nine-digit zip code) as well as the congressional district in which this location resides.
- (4) The applicable North American Industry Classification System code for the goods or services provided.
- (5) In addition, Contractor shall provide information summarizing the total compensation and names of each of the five most highly compensated executives for Contractor’s preceding completed fiscal year, if: (i) in its

¹ Applies only if the Agreement has a value in excess of \$5,000,000 and a performance period of more than 120 days.

² Applies only if Contractor will be required to design, develop or operate a system of records on individuals to accomplish a Government function.

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⁴ Applies only if Contractor provides further subcontracting opportunities under the Agreement.

⁵ Applies only if the Agreement or any purchase order thereunder has a value equal to or greater than \$100,000.

⁶ Applies only if the Agreement or any purchase order thereunder has a value equal to or greater than \$10,000.

⁷ Applies only if the Agreements or any purchase order thereunder is expected to have a value in any single year that exceeds the current “simplified acquisition threshold” as defined in FAR 2.101.

⁸ Applies only if the Agreement: (i) has a value in excess of \$3,000; (ii) is for services (excluding services to provide only “Commercially available off-the-shelf (“COTS”) items”, as defined in the FAR, or items that would be a COTS item but for minor modifications) performed by the COTS provider and normally provided for that COTS item or is for construction, and (iii) includes work performed in the United States.

⁹ Applies only if Government property is provided to Contractor for performance of the Agreement.

¹⁰ Does not apply if the Agreement is valued at less than \$25,000, if Contractor is an individual; or if Contractor’s gross receipts in the immediately preceding tax year were less than \$300,000.

preceding fiscal year, Contractor received: both 80% or more of its annual gross revenues and \$25,000,000 or more in annual gross revenue from Federal contracts, subcontracts, loans, grants, subgrants, and cooperative agreements; and (ii) the public does not have access to information about compensation of Contractor's executives through periodic reports filed under Section 13(a) or 15(d) of the Securities Exchange Act of 1934 or Section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access, see U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

(c) Contractor acknowledges that information reported under this provision will be made public by the Government pursuant to the Federal Funding Accountability and Transparency Act of 2006, as amended by section 6202 of the Government Funding Transparency Act of 2008.

(d) *Definitions.* As used in this clause:

- (1) "Executive" means officers, managing partners, or any other employees in management positions.
- (2) "Total compensation" means the cash and noncash dollar value earned by an executive during the Contractor's preceding fiscal year and includes (for more information see 17 C.F.R. 229.402(c)(2)):
 - (i) *Salary and bonus.*
 - (ii) *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - (iii) *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - (iv) *Change in pension value.* The change in present value of defined benefit and actuarial pension plans.
 - (v) *Above-market earnings on deferred compensation which is not tax-qualified.*
 - (vi) Other compensation, if the aggregate value of all such other compensation (*e.g.*, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

IX. Precedence of Terms. These Special Terms and Conditions shall apply in all instances. In the event of any conflict between any of the Special Terms and Conditions and any other provision of the Agreement, including without limitation any General Terms and Conditions, these Special Terms and Conditions shall apply.