

Effective Date: _____
(PennDOT will insert)

Agreement No. _____
Federal ID No. _____

EMISSIONS INSPECTOR CERTIFICATION PROGRAM PERFORMANCE AGREEMENT

This Emissions Inspector Certification Program Performance Agreement ("Agreement") is made by and between the Commonwealth of Pennsylvania ("Commonwealth"), acting through the Department of Transportation ("PennDOT") and _____, a _____ ("Educational Provider").

BACKGROUND

PennDOT is responsible for the development, implementation and operation of the Emissions Inspector Certification ("EIC") Training Program as set forth in 67 Pa. Code Chapter 177 ("Emissions Inspection Program"); 75 Pa. C.S. §§ 101 et seq. To fulfill this responsibility, PennDOT is utilizing public and private educational providers and other entities as appropriate, which meet PennDOT's standards to provide a formal presentation of this instruction and possible certification testing. PennDOT may solicit assistance from the Bureau of Vocational Education, located within the Pennsylvania Department of Education, in reviewing the selection of public vocational and post-secondary institutions to carry out this program. To provide for a standardized EIC Training Program, PennDOT is requiring specific services, standards, and overall instruction performance requirements. PennDOT has determined that the Educational Provider is qualified to provide the necessary instruction and, if applicable, testing services.

The parties, intending to be legally bound, agree as follows:

1. **Program Content and Certification.** PennDOT shall provide the Educational Provider with the Training Program content. PennDOT shall be the sole authority able to certify Emissions Inspection Instructors and Emissions Inspectors.
2. **Class Administration.** All classes or testing, where applicable, shall be administered by a certified emissions inspection instructor who has attended and passed all requirements of the Emission Inspection Instructor Training Program prescribed by PennDOT.
3. **Instructor Requirements.** The Educational Provider shall provide PennDOT with instructor transcripts and resumes containing automotive and teaching credentials and work experience for each certified instructor who wishes to participate in this program.
4. **Technical Assistance.** Technical assistance shall be available to the Educational Provider through PennDOT's Bureau of Motor Vehicles.
5. **Technical Assistance (Pennsylvania Department of Education).** PennDOT may be

assisted by the Department of Education in providing technical assistance to the Educational Provider.

6. **Program Instruction.** The Educational Provider shall present the EIC Training Program by the method as indicated in the official instruction outline. Changes in presentation shall be approved by PennDOT before they can be implemented. Materials may be web-based and accessible through <https://www.patrainportal.com/> or provided in hard-copy form by PennDOT.

FACILITIES

7. **Facility Maintenance.** The Educational Provider shall always maintain a facility which is acceptable in appearance to PennDOT and is in compliance with all applicable federal, state, and local laws, some of which shall include, local zoning ordinances and building codes, and is fully accessible to persons with disabilities in accordance with the provisions of Title II of the Americans with Disabilities Act.
8. **Facility Security.** The Educational Provider's facility shall include secure storage for instructional supplies, testing materials, and student records subject to approval by PennDOT. PennDOT expressly reserves the right to amend this Agreement to provide for the implementation of additional security measures as shall be determined to be required by PennDOT at its discretion.
9. **Adequate Classroom Facilities.** The Educational Provider shall provide adequate classroom facilities, which shall comply with all applicable state and federal laws and regulations to accommodate the group size of participating students.
10. **Required Teaching Supplies.** The Educational Provider shall provide necessary teaching supplies for training purposes including computer access with internet connectivity, seating, white boards, audio aids and visual aids.
11. **Satellite Locations.** The Educational Provider may hold training at satellite locations only if the facilities are conveniently located for accessibility for students. The Educational Provider shall request a site visit by a PennDOT representative or submit a formal request on letterhead for a change in the approved-facility to be approved by PennDOT. Approval must be sought thirty (30) days prior to planned use. Once approved, the Educational Provider shall notify PennDOT within twenty four (24) to forty eight (48) hours prior to conducting a class or testing at the approved, off-campus site.

PERSONNEL

12. **Personnel Criminal Record Check Requirements.** Prior to execution of this Agreement, and annually thereafter, the Educational Provider shall provide to PennDOT a list of all personnel to be engaged in executing or administering the terms of this Agreement and in providing training under it. The Educational Provider shall, prior to execution of this

Agreement, obtain a criminal record check for each of the Educational Provider's owners, officers, administrators, certified emission inspection instructors, and employees involved in executing or administering the terms of this Agreement and in providing training under it. Criminal record checks shall be obtained from the Pennsylvania State Police and shall be made available to PennDOT. Subsequent criminal record checks shall be required upon request by PennDOT. PennDOT shall review the criminal history of all personnel involved in executing or administering the terms of this Agreement and may refuse execution of this Agreement based on past criminal activity of such personnel if it is determined that execution of this Agreement is not in the best interest of the Commonwealth or the EIC Training Program. The Educational Provider shall provide timely written notification to PennDOT of all personnel changes, as they occur, and criminal record checks for new personnel.

13. **Personnel Violation Disclosures.** The Educational Provider shall disclose to PennDOT, in writing, any violations by the Educational Provider, any of its owners, officers, administrators, certified emission inspection instructors, or employees of the Emissions Inspection Program. Such violations shall be considered by PennDOT and, at PennDOT's discretion, may be cause to refuse execution of this Agreement if it is determined that execution of this Agreement is not in the best interest of the Commonwealth or the EIC Training Program.
14. **Instructor Certification.** The Educational Provider shall request certification of emissions inspection instructor candidates by submission of a letter of intent on the Educational Provider's letterhead. PennDOT shall be the sole authority for approval of emissions inspection instructor candidates, regardless of whether the emissions inspection instructor candidates' relationship to the Educational Provider is that of employee, subcontractor, independent contractor, or otherwise. The Educational Provider shall provide to PennDOT each emissions inspection instructor candidate's educational transcripts, a copy of the emissions inspection instructor candidate's current emissions inspector certification card and resume containing automotive and teaching credentials, and work experience for each emissions inspection instructor candidate who wishes to participate in this program. Any violations of the Emissions Inspection Program shall be disclosed to PennDOT by the emissions inspection instructor candidate and Educational Provider and may be cause for disapproval of an emissions inspection instructor candidate. In addition, the Educational Provider shall obtain criminal record checks for each emissions inspection instructor candidate from the Pennsylvania State Police and make them available to PennDOT. PennDOT may solicit assistance from the Bureau of Vocational Education, Pennsylvania Department of Education, in reviewing the instructor approval process for public vocational and post-secondary Educational Providers.
15. **Selection of Educational Provider.** PennDOT may solicit information from the Educational Provider regarding PennDOT's preference of an Educational Provider to provide instruction and evaluation of the emissions inspection instructor candidates. PennDOT shall be the sole authority for selecting the Educational Provider to provide instruction and evaluation of emissions inspection instructor candidates. Educational Providers shall not provide instruction and evaluation of emissions inspection instructor candidates employed

or expected to be employed by the requesting Educational Provider.

16. **Emissions Inspection Instructor Candidates' Course Hour Requirements.** Instruction and evaluation of emissions inspection instructor candidates shall consist of a minimum of eight (8) hours of classroom observation and testing with a certified emissions inspection instructor. Emissions inspection instructor candidates shall participate in teaching the classroom instruction to be evaluated by the certified emissions inspection instructor. No fee shall be charged for certification of emissions inspection instructor candidates. Qualified emissions inspection instructor candidates shall receive an Emissions Inspection Instructor Certification from PennDOT upon successful completion of the Emissions Inspection Instructor Training, receipt of a favorable recommendation from the evaluating certified emissions inspection instructor, and final approval from PennDOT.
17. **License Requirements for Certified Emissions Inspection Instructors Authorized to Teach Programs.** PennDOT's Emissions Inspection Instructor Certification authorizes certified emissions inspection instructors to teach the EIC Training Program. Certified emissions inspection instructors shall have a valid Pennsylvania photo driver's license. Out-of-state resident certified emissions inspection instructors shall have a valid Pennsylvania Photo Identification number and out-of-state driver's license.
18. **Affidavits.** The Educational Provider shall, at the time of hiring and annually thereafter, secure an affidavit from each person engaged in activities under this Agreement indicating that he or she has reviewed the terms of this Agreement and is properly certified as required by PennDOT. Completed affidavits shall be made available to PennDOT upon request. The Educational Provider shall be responsible for the conduct of all personnel engaged in activities under this Agreement.
19. **Certification Validity.** Emissions Inspection Instructor Certification will remain valid as long as a certified emissions inspection instructor continues to teach the program in accordance with this Agreement and the provisions of the Emissions Inspection Program. If a certified emissions inspection instructor does not teach the EIC Training Program within a three- (3-) year period, violates provisions of the Emissions Inspection Program, or fails to remedy deficiencies in instruction as required by PennDOT, PennDOT reserves the right to revoke the certified emissions inspection instructor's certification. Emissions inspector certifications obtained in conjunction with certification as an emissions inspection instructor (without course instruction and testing) may also be revoked, at the discretion of PennDOT.
20. **Certified Emissions Inspection Instructor Identification Number.** Each certified emissions inspection instructor shall use his or her emissions certification ID number. This number shall be assigned by PennDOT. This number shall be used to identify the certified emissions inspection instructor on all documents submitted to PennDOT.
21. **Instructor Clinics.** Periodic emissions inspection instructor clinics may be required by PennDOT to provide program updates and information to the Educational Provider, its administrators and certified emissions inspection instructors. When feasible, these clinics

may be held in conjunction with the annual curriculum workshop held by the Pennsylvania Department of Education.

22. **Program Performance Standards.** Certified emissions inspection instructors shall meet program performance standards as previously stated. Special attention must be given to student identification, course, and certification categories.
23. **Substitute Emissions Inspection Instructor.** PennDOT reserves the right to require the Educational Provider to substitute a certified emissions inspection instructor if the current certified emissions inspection instructor is in violation of any of the terms and conditions of this Agreement, is under any civil or criminal investigation, or engages in unethical conduct. The Educational Provider shall provide PennDOT the name of any substitute emissions inspection instructor for approval prior to the Educational Provider conducting a class.

SECURITY

24. **Record Maintenance.** The Educational Provider, its administrators, supervisors, and certified emissions inspection instructors shall maintain proper program records and materials in a secure location, under lock and key, to prevent unauthorized access to student information. Where electronic data relating to training offered through this Agreement is stored or transmitted by the Educational Provider, the Educational Provider shall comply with all Commonwealth IT Policies relative to contractor personnel and records. Commonwealth IT Policies can be found at <http://www.oa.pa.gov/Policies/Pages/itp.aspx>.
25. **Testing Materials.** Testing materials, if applicable, shall not be provided to any unauthorized personnel or to any student for purposes other than testing. Tests shall be secured at the conclusion of each class.
26. **Test Completion.** The Educational Provider shall collect all tests and scoring sheets after the completion of each test, if applicable. The Educational Provider shall enter the class roster and exam scores into the online Vehicle Inspection System.

STUDENT REQUIREMENTS AND ELIGIBILITY

27. **Who May Register.** Any interested person may register and apply for the EIC Training Program. Registration is for all students with or without previous mechanical training.
28. **Requirements to Become a Certified Emissions Inspector.** A person must successfully complete the EIC Training Program to become a certified Emissions Inspector.
29. **Age Requirement.** The Educational Provider shall ensure that all students are at least eighteen (18) years of age to be eligible to apply for certification from PennDOT. A student shall provide proof of age by presenting a current driver's license which shall be verified by the Educational Provider prior to beginning instruction. For a student less than eighteen

(18) years of age, while able to participate in the instruction and exam, the student must notify PennDOT upon reaching the age of eighteen (18) to receive their ID card.

30. **Program Requirements Made Known Prior to Admission.** All students shall be made aware of program requirements and responsibilities prior to admission through written material published by the Educational Provider. The Educational Provider shall inform all students prior to admission that the required training materials must be read before instruction begins and the student shall bring all training materials to class.
31. **Student Identity Verification.** The Educational Provider, its certified emissions inspection instructors, and any personnel involved in registering students entering the EIC Training Program shall verify the identification ("ID") of every student requesting registration.
32. **Driver's License Requirement.** The Educational Provider or certified emissions inspection instructor shall verify the ID of every registered student entering the EIC Training Program during the initial class period and at all examinations and tactile test periods. All students shall provide their valid Pennsylvania photo driver's license secured from PennDOT. Out-of-state students shall provide a valid out-of-state driver's license. Students failing to provide required ID shall not be allowed to participate in the instruction or take the required tests. If the student presents a driver's license which is not valid, or does not have valid driving privileges upon successful completion of all course examinations, no certification credentials shall be issued. The Educational Provider or certified emissions inspection instructor shall contact PennDOT prior to beginning instruction to determine the eligibility of any student who is unable to present a valid driver's license or any student with restricted driving privileges that may make them ineligible for certification, i.e., Occupational Limited License ("OLL"), Probationary License ("PL"), or Ignition Interlock ("II"). If the student presents proof of valid driving privileges within one (1) year of successful completion of all course examinations, certification credentials will be issued. If unable to provide proof of valid driving privileges within the specified time frame, the exam results shall become invalid.
33. **Driver's License Restrictions.** The Educational Provider shall notify students with driver's license restrictions 3 (automatic transmission) and 4 (special equipment) that they may register for the course and, upon satisfactory completion, apply for certification. However, course completion and application shall not guarantee certification; each application with any of the above restrictions shall be reviewed by PennDOT on a case-by-case basis. Students with restrictions may have their application rejected by PennDOT and are urged to determine their eligibility for certification prior to registering for the course.
34. **Educational Provider Restrictions.** Unless otherwise approved by PennDOT in writing, Educational Providers that are private licensed schools or seminar providers may not instruct, test, and apply for certification for employees of the Educational Provider.

INSTRUCTIONAL AND TESTING MATERIALS

35. **Training Material Availability.** Training materials shall be made available on-line. On-line

instructor materials will be provided free of charge to the Educational Provider.

36. **Textbook Availability On-line.** Textbook materials may be made available on-line for the student for a fee. The Educational Provider shall not charge for materials provided by PennDOT on-line.

CLASSROOM INSTRUCTION, TESTING, AND CERTIFICATION

37. **Educational Provider and Certified Emissions Inspection Instructor Identification Numbers.** The Educational Provider and each certified emissions inspection instructor shall have an identification number. The identification number for the Educational Provider shall be the Vocational Education Management Information System ("VEMIS") number or a number assigned by PennDOT. The certified emissions inspection instructor number shall be the same as their emissions inspector number. These numbers shall be used to identify the Educational Provider and certified emissions inspection instructor(s) on all documents submitted to PennDOT.
38. **Program Content.** The EIC Training Program shall cover all required program content listed in the official instruction outline as designated by PennDOT.
39. **Minimum Training Hours Requirement.** The EIC Training Program shall require a minimum of eight hours class work, to include testing, if applicable. Additional time may be required, at the certified emissions inspection instructor's discretion.
40. **Scheduled Training.** The Educational Provider officials shall work to their best ability to schedule students for the training course as soon as possible. Students must be notified of all open classes.
41. **Adequate Classroom Facilities.** The Educational Provider shall provide adequate classroom facilities that accommodate the group size of participating students and comply with all applicable local, state, and federal laws and regulations.
42. **Instruction Cancellation Prohibited.** Once instruction has officially begun, it shall not be cancelled because of student dropouts.
43. **Class and Test Administration.** All classes, and testing, if applicable, shall be administered by an emissions inspection instructor certified by PennDOT.
44. **Failure of Written Test.** A student who fails the initial certification exam twice shall retake the entire EIC instructor-led course and pay for an additional online exam.
45. **On-line Training.** All students seeking initial certifications must secure their online training materials in advance of attending their instructor-led course in a classroom setting and taking a proctored online exam.
46. **Training Content and Minimum Classwork and Testing Requirements.** Content covered

in the classroom shall meet program objectives listed in the instructor guides and these Terms and Conditions. No modifications or deviations from these materials shall be made without the express written approval of PennDOT. The Educational Provider shall provide a total of eight (8) hours of instruction, which includes the exam. The initial exam will be completed on-line and proctored by the certified emissions inspection instructor.

47. **Passing Score.** The student shall pass the online EIC exam with a grade percentage of eighty percent (80%) or more correct answers.
48. **Test Timeframe.** Failure to pass the online EIC exam within the allotted time shall require the student to retake the exam. A student who fails the final exam twice is required to repeat the class and purchase an additional online exam.
49. **Open Book Testing Prohibited.** Open book testing is prohibited.
50. **EIC Program Completion.** Upon a student's successful completion of the certified emissions instructor-led classroom course, the certified emissions instructor will confirm the student's attendance online through the patrainingportal.com, and establish the student's ability to access the online exam. Upon exam completion, the instructor will record the student's grade in PennDOT's Vehicle Inspection System.

FEES

51. **Permissible Tuition Fees.** To offset financial requirements for the purchase of equipment, instruction materials, and instructor and administrative processes, the Educational Provider may secure revenues through tuition fees.
52. **Notification of Tuition Fees.** The Educational Provider shall notify all students that a tuition fee may be required for the instruction. Pennsylvania State Police officers assigned as Vehicle Fraud Investigators and PennDOT employees or authorized representatives of PennDOT assigned as Quality Assurance Officers are not required to pay a tuition fee for the instruction.
53. **Government Monies.** The Educational Provider shall use available federal, state and local monies that can be applied for this specific program to offset costs of presenting the instruction.
54. **Tuition Variance.** Students enrolling in the EIC Training Program residing in a non-participating district ("non-sponsored student") may be required to pay additional tuition fees ("tuition variance").

AUDITS AND OVERSIGHT

55. **Audit Visits.** PennDOT reserves the right to make visits for the audit, observation, and evaluation of the Educational Provider's facilities and certified emission instructor presentation (this includes both secondary and adult education courses). The visit may

include the examination of the records which are subject to the record keeping requirements of this Agreement and PennDOT regulations. The Educational Provider may be notified prior to the visit(s). The Educational Provider shall make every reasonable effort to make records available to PennDOT upon demand.

56. **Audit-Ready Status Required.** The Educational Provider shall maintain an audit-ready status at all times, as audits may be unannounced.
57. **Program Implementation Assistance.** Periodic visits may be arranged to meet with the Educational Provider administrators and certified emissions inspection instructors to review and assist in the implementation and presentation of the program.
58. **Periodic Bulletins.** PennDOT shall periodically send bulletins to the Educational Provider, its certified emissions inspection instructors, and administrators concerning the EIC Training Program. PennDOT shall also send all inspection bulletins that clarify regulations to certified emission inspection instructors to ensure their knowledge is current.
59. **Department of Education Audits.** The Pennsylvania Department of Education may make periodic audits of EIC Training Program records maintained at public vocational and post-secondary Educational Providers.
60. **Compliance with Laws and Regulations.** The Educational Provider shall comply with all applicable federal and state laws and regulations and local ordinances in carrying out its obligations under this Agreement.
61. **Indemnification.** The Educational Provider shall indemnify, and defend (if requested) the Commonwealth of Pennsylvania, PennDOT, its officers, agents and employees, from all suits, actions or claims of any character, name or description, brought for or on account of any injuries to or damages received or sustained by any person(s), or property by or from the Educational Provider and its administrator, certified emissions inspection instructors, employees, servants, agents, as a result of any obligations under this Agreement or resulting from the instruction provided for, or performed under, this Agreement.
62. **Applicable Law.** This Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, without regard to conflicts of law principles.
63. **Conflict Between Agreement and Attachments.** In the event of conflict between the provisions of this Agreement and any attachment to this Agreement, the provisions of this Agreement shall control.
64. **Termination for Good Cause.** PennDOT reserves the right to terminate this Agreement for any specific campus(es) or the Educational Provider as a whole for good cause shown. Good cause shall include, but not be limited to, nonperformance or inadequate performance; activity or conduct engaged in by the Educational Provider, any of its owners, officers, administrators, certified emissions inspection instructors, or employees involved in executing or administering the terms of this Agreement, that is not in the best interest of

PennDOT, demonstrates a failure to exercise due care or an appropriate degree of responsibility, or is contrary to the Terms and Conditions of this Agreement; misrepresentation or fraud on the part of the Educational Provider, any of its owners, officers, administrators, certified emissions inspection instructors, or employees involved in executing or administering the terms of this Agreement; or the existence of circumstances after execution of this Agreement that would have caused PennDOT to refuse execution of this Agreement.

65. **PennDOT's Right to Suspend, Terminate, or Revoke this Agreement.** If a certified emissions inspection instructor or member of the Educational Provider acts in a manner in violation of the goals and mission of PennDOT, PennDOT reserves the right to suspend, terminate, or revoke this Agreement for any specific campus(es) or the Educational Provider as a whole as well as the inspector certifications of any of the individuals in question.
66. **Educational Provider's Notice of Termination.** The Educational Provider may terminate this Agreement by providing a written notice thirty (30) days prior to the proposed termination date.
67. **PennDOT's Notice of Termination.** PennDOT may terminate this Agreement for good cause as provided in this Agreement, by providing a written notice of termination. The written notice shall state that termination of the Agreement shall be effective in thirty-one (31) days from the mail date specified in the notice, unless the Educational Provider appeals the notice of termination under 2 Pa. C.S. §§ 501-508 (relating to general rules of administrative practice and procedure of administrative agencies); 1 Pa. Code Part II (relating to general rules of administrative practice and procedure); and 67 Pa. Code Chapter 491 (relating to administrative practice and procedure) by filing a written request for a hearing within thirty (30) days of the mail date to:

Administrative Docket Clerk
Office of Chief Counsel
400 North Street, 9th Floor
Harrisburg, PA 17120-0096

A copy of the termination notice must accompany the request for a hearing.

68. **Suspension of Educational Provider Operations.** PennDOT reserves the right to suspend the Educational Provider's operations under this Agreement on an interim basis prior to the termination date or a hearing, where it determines that the Educational Provider's conduct presents an immediate and substantial threat of harm to the public or PennDOT's interests. Any such interim suspension shall be subject to review as provided in 67 Pa. Code Chapter 491 (relating to administrative practice and procedure).
69. **Standard Provisions.** The Educational Provider shall comply with and be bound by the Contractor Integrity Provisions, Contractor Responsibility Provisions, Commonwealth NonDiscrimination/Sexual Harassment Clause, and the Provisions Concerning the Americans With Disabilities Act which are attached to and made part of this Agreement as

Exhibits A, B, C, and D, respectively. The term "Contractor" as used in these Exhibits shall mean the Educational Provider.

70. **Information Technology Policies.** The Educational Provider shall comply with all applicable IT standards and policies issued by the Governor's Office of Administration. These standards and policies are contained in the Information Technology Policies (ITPs), and are posted at: <http://www.oa.pa.gov/Policies/Pages/itp.aspx>. The ITPs are incorporated herein by reference as though set forth at length.
71. **Right-to-Know Law.** The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101- 3104, applies to this Agreement and is attached to and made part of this Agreement as Exhibit E. The Educational Provider shall abide by the requirements in Exhibit E. The term "Contractor" as used in this Exhibit shall mean the Educational Provider.
72. **Severability.** The provisions of this Agreement shall be severable. If any phrase, clause, sentence or provision of this Agreement is declared to be contrary to the Constitution of Pennsylvania or of the United States or of the laws of the Commonwealth the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby.
73. **Term.** This Agreement shall become effective from the date of the last signature to the Agreement and shall remain in effect unless terminated pursuant to the terms of this Agreement.
74. **Amendments.** Any changes, corrections, or additions to the Agreement, with exception of the Notice section, shall be in writing in the form of a letter amendment signed by both parties, setting forth the proposed change, correction, or addition. The letter amendment shall be considered fully executed when signed by the authorized representatives of the parties as well as PennDOT's Office of Chief Counsel.
75. **Notice.** Any written notice to any party under this Agreement shall be deemed sufficient if delivered personally; or by certified or registered United States mail, postage prepaid, return receipt requested; or by a recognized overnight courier service (e.g., Federal Express, United Parcel Service or DHL) with confirmed receipt; or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), and sent to the Educational Provider's main campus and to PennDOT at the following addresses:

For PennDOT:
Pennsylvania Department of Transportation
Vehicle Inspection Division
ATTN: Schools and Instructors Unit Manager
PO Box 69003
Harrisburg, PA 17106-9003
RA-PDSCHOOLINSTRUCT@pa.gov
Fax: 717-705-6990

For the Educational Provider (main campus):

Title

Address

Email

Fax number

or to such other address as a party may designate in writing to the other party. Except for the notices to be given under the "Termination" section above, notice shall be deemed given when received.

76. **Titles Not Controlling.** Titles of sections are for reference only, and shall not be used to construe the language in the Agreement.
77. **No Waiver.** Either party may elect not to enforce its rights and remedies under this Agreement in the event of a breach by the other party of any term or condition of this Agreement. In any event, the failure by either party to enforce its rights and remedies under this Agreement shall not be construed as a waiver of any subsequent breach of the same or any other term or condition of this Agreement.
78. **Independence of the Parties.** It is understood by and between the parties that nothing contained herein is intended or shall be construed to, in any respect, create or establish the relationship of partners between the Educational Provider and PennDOT, or as constituting PennDOT as the representative or general agent of the Educational Provider for any purpose whatsoever.
79. **Assignment.** This Agreement may not be assigned by the Educational Provider, either in whole or in part, without the written consent of PennDOT.
80. **No Third Party Beneficiary Rights.** The parties to this Agreement understand that this Agreement does not create or intend to confer any rights in or on persons or entities not a party to this Agreement.
81. **Force Majeure.** Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

82. **Integration and Merger.** This Agreement and, if applicable, any exhibits and attachments when executed, approved and delivered, shall constitute the final, complete and exclusive Agreement between the parties containing all the terms and conditions agreed on by the parties. All representations, understandings, promises and agreements pertaining to the subject matter of this Agreement made prior to or at the time this Agreement is executed are superseded by this Agreement unless specifically accepted by any other term or provision of this Agreement. There are no conditions precedent to the performance of this Agreement except as expressly set forth herein.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date of the last signature affixed below.

ATTEST:

*.

_____		BY	_____	
Title:	Date		Title:	Date

Educational Provider must complete the attached resolution or provide its own resolution authorizing signature authority.

DO NOT WRITE BELOW THIS LINE – FOR COMMONWEALTH USE ONLY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY _____
Deputy Secretary Date

APPROVED AS TO LEGALITY
AND FORM

BY _____
for Chief Counsel Date

BY _____
Deputy General Counsel Date

BY _____
Deputy Attorney General Date

BY _____
Office of Comptroller Date
Operations

RESOLUTION

BE IT RESOLVED, by authority of the _____ of the
(Name of governing body*)

_____ in _____ County, and it is hereby
(Name of Educational Provider)

resolved by authority of the same, that the _____ be authorized and
(Designate official title)

directed to sign the attached agreement on its behalf and that the _____
(Designate official title)

be authorized to attest the same.

ATTEST:

EDUCATIONAL PROVIDER:

(Signature and designation of official title) By: _____
(Signature and designation of office title)

*Governing Body- Board of Trustees, Board of Directors, etc.

I _____ , _____
(Name) (Official Title)

of the _____ , do hereby certify that
(Name of governing body and Educational Provider)

the foregoing is a true and correct copy of the Resolution adopted at a regular meeting of the

_____ held on the _____ day of _____ , 20 _____.
(Name of governing body)

DATE: _____ , 20 _____. _____
(Signature and designation of official title)

CONTRACTOR INTEGRITY PROVISIONS

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

1. **DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:
 - a. **"Affiliate"** means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
 - b. **"Consent"** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
 - c. **"Contractor"** means the individual or entity, that has entered into this contract with the Commonwealth.
 - d. **"Contractor Related Parties"** means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
 - e. **"Financial Interest"** means either:
 - (1) Ownership of more than a five percent interest in any business; or
 - (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
 - f. **"Gratuity"** means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the [Governor's Code of Conduct, Executive Order 1980-18](#), the 4 Pa. Code §7.153(b), shall apply.
 - g. **"Non-bid Basis"** means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.
2. In furtherance of this policy, Contractor agrees to the following:
 - a. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.

- b. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
- c. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.
- d. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
- e. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:
 - (1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 - (2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
 - (3) had any business license or professional license suspended or revoked;
 - (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
 - (5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

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

- f. Contractor shall comply with the requirements of the *Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.)* regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the *Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a)*.
- g. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.
- h. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- i. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.
- j. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

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

**Nondiscrimination/Sexual Harassment Clause
(August 2018)**

The Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
2. 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, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
3. 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 contract.
4. 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.
5. The Contractor and each 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 contracted services are performed shall satisfy this requirement for employees with an established work site.
6. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
7. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies

relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report (“EEO-1”) with the U.S. Equal Employment Opportunity Commission (“EEOC”) and shall file an annual EEO-1 report with the EEOC as required for employers’ subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

8. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.

9. The Contractor’s and each subcontractor’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 and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.

10. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

PROVISIONS CONCERNING THE *AMERICANS WITH DISABILITIES ACT*

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, supplier, or grantee, who will furnish or perform or seeks to furnish or perform, goods, supplies, services, construction or other activity, under a purchase order, contract, or grant with the Commonwealth of Pennsylvania (Commonwealth).

During the term of this agreement, the contractor agrees as follows:

1. 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 a 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 through contracts with outside contractors.
2. The contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth as a result of the contractor's failure to comply with the provisions of paragraph 1.

EXHIBIT D

Contract Provisions – Right to Know Law

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”) applies to this Contract. For the purpose of these provisions, the term “the Commonwealth” shall refer to the contracting Commonwealth agency.
- b. If the Commonwealth needs the Contractor’s assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, 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 the Contractor’s assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor’s possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Contractor 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 the Contractor’s possession arising out of this Contract 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 Contract.
- d. If the Contractor 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 the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- e. The Commonwealth will rely upon the written statement from the Contractor 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, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth’s determination.
- f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor’s failure, including any statutory damages assessed against the Commonwealth.

EXHIBIT E

- g. The Commonwealth will reimburse the Contractor 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. The Contractor 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, the Contractor 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 the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor 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 Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

EXHIBIT E