

PENNSYLVANIA COUNCIL ON THE ARTS
ADDITIONAL TERMS AND CONDITIONS GOVERNING GRANTS-IN-AID (33-FA-5.0)

MEANING OF "CONTRACT" AND "CONTRACTOR"

The parties understand the terms "contract" and "contractor" within this Agreement shall mean "grant agreement" and "grantee" respectively.

1. REPORTING

Upon submission of the grant award agreement, but in no event later than September 30th of the same year, grantee shall submit to the Council a narrative report and a financial statement sworn to and signed by the grantee's chief executive officer.

- a. The narrative report shall include, but not be limited to:
 - 1) A detailed description of all activities for which funds have been awarded, including dates of all performances and exhibits;
 - 2) Audience attendance and numbers of participants;
 - 3) Programs and other printed materials;
 - 4) Critical reviews, if any.
- b. The financial report shall consist of a detailed statement of all income and expenses relating to the activities for which funds have been awarded.
- c. Grantee shall submit the narrative report on the Council's "Narrative Report of Grant-in-Aid" form, and the financial report on the Council's "Financial Report of Grant-in-Aid" form, or such other forms as may be specified by the Council.
- d. If grantee obtains a certified financial statement of general operations, grantee shall submit a copy of the statement to the Council immediately after its receipt.
- e. When grantees are recipients of federal grants and contracts, through the PCA, those grantees must comply with additional reporting requirements under the Federal Funding Accountability and Transparency Act (Pub. L. 109-282).

2. ACKNOWLEDGMENTS

Grantee agrees:

- a. To include an acknowledgment of state arts funding support in all published materials and announcements relating to its PCA funded activities and disseminated by the Grantee. The acknowledgment must stand-alone and not be combined with acknowledgments of funding from other public and private sources. Acknowledgment of PCA support must state as follows [Note: select/insert the appropriate information where square brackets indicate]:

For AOAP grantees:

"[Grantee name] receives state arts funding support through a grant from the Pennsylvania Council on the Arts, a state agency funded by the Commonwealth of Pennsylvania and the National Endowment for the Arts, a federal agency."

For all other grantees:

"This [project/program/performance/exhibition/publication/workshop] was supported in part by the Pennsylvania Council on the Arts, a state agency funded by the Commonwealth of Pennsylvania and the National Endowment for the Arts, a federal agency."

- b. To incorporate the PCA logo in its programs, promotional materials, education materials, and posters relating to its PCA funded activities and disseminated by the Grantee. The PCA shall supply said logo on coated stock or by email upon request;
- c. To list the "Pennsylvania Council on the Arts, a state agency" in the appropriate donor category in all donor lists disseminated by the Grantee.

3. MAINTAINING FINANCIAL RECORDS For the purpose of maintaining records and reporting, grantees (including those receiving General Support Grants) shall keep a record reflecting all receipts, obligations and disbursements of funds for all activities covered by this contract and to maintain such records as follows:

- a. Until the expiration of a three-year period beginning with the submission of the Financial Report of Grant-in-Aid, or
- b. Until all audits begun during such three-year period or **prior** thereto have been completed and findings involving the records have been resolved, whichever is the longer period.

Grantee Financial Management Systems shall provide for:

- a. Records that adequately identify the source and application of funds for grant supported activities. These records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liability, outlays, and income.

Specifically, the Council requires that grantees maintain in their files copies of the following documents:

- application · organizational profile · non-discrimination clause · signed and approved invoice · financial and narrative reports · award letter · receipts, invoices and canceled checks · time sheets for prorated salaries · articles, photos, programs, catalogues
- b. Effective control over and accountability for all funds, property and other assets. Grantees shall safeguard all such assets adequately and shall assure that they are used solely for authorized purposes. Effective internal control requires proper segregation of duties so that key duties and responsibilities in authorizing, processing, recording, and receiving grant transactions should be, as much as practically possible, separated among individuals.
- c. Comparison of actual with budgeted amounts for each grant. Also, relation of financial information with performance or productivity data, including the production of unit cost information whenever appropriate and required.
- d. Procedures to minimize the time elapsing between the transfer of funds from the state disbursing office and the disbursement by the grantee.
- e. Procedures for determining the allowability and allocability of costs in accordance with the provision of the Office of Management and Budget Circular A87, A122, A133, or A21 as applicable.
- f. Accounting records which are supported by source documentation.
- g. Properly documented in-kind contributions, if included as part of the financial record (see General Provisions).
- h. A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

4. REGULATIONS

Grantees must adhere to the administrative requirements for grants-in-aid as promulgated in Office of Management and Budget Circular A102 (state and local government recipients) or A110 (institutions of higher education, hospitals, and other nonprofit recipients.)

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5. AUDIT OF RECORDS Grant awards are subject to audit by Federal and State agencies or their authorized representatives. Grantees shall provide access to the Council, authorized Federal and State agencies (including the NEA and the Comptroller General) and their authorized representatives, to any books, documents, papers, and records maintained to account for funds expended under the terms and conditions of this grant for the purpose of making audits, examination excerpts and transcripts, and shall provide audit reports of Grantee-conducted audits of these funds upon request. Grantees shall make all such records available upon request for examination during regular business hours.

The Commonwealth reserves the right for itself, authorized Federal and State agencies and their authorized representatives to perform additional audits of a financial/compliance, economy/efficiency or program results nature, of all grant recipients regardless of grant amount or source, at their discretion. 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 expenses to Grantee. The Council further reserves the right at its discretion to require grantees who are not otherwise required to conduct audits to perform an audit in accordance with applicable Yellow Book standards, if the Council determines that it is reasonable to do so.

Grantee is responsible for obtaining any required audit and shall secure the services of a public accountant, certified public accountant, the PA Council on the Arts Comptrollers Office, the Department of the Auditor General or other independent governmental auditor. Federal regulations preclude public accountants licensed in the Commonwealth of Pennsylvania from performing audits of federal financial assistance. However, public accountants licensed with the State Board of Accountancy may perform audits of 100 percent state funded programs.

Grantees subject to particular audit requirements by the laws and regulations governing the programs in which they participate shall comply with those requirements. Audits shall generally be performed in accordance with the auditing standards promulgated by the Comptroller General of the United States as specified in "Standards for Audits of Governmental Organizations, Programs, Activities and Functions" (Yellow Book), latest revision as of the time of the audit.

Federal Audit Requirements

Requirements and guidelines for audits of *Federal* financial assistance provided to state and local governments are covered under OMB Circular A133, "Audits of States, Local Governments and Non-profit Organizations", as amended. The audit requirement of this agreement will be satisfied if a single audit is performed under the provisions of the Single Audit Act of 1984, 31 U.S.C. 7501 et seq., and all rules and regulations promulgated pursuant to the Act.

The PA Council on the Arts provides federal financial assistance to a variety of entities that are or are not subject to the provisions of the Single Audit Act of 1984 (31 U.S.C. 7501 et seq.) If Grantee expends \$300,000 or more of Federal awards during its fiscal year (\$500,000 for fiscal years ending after December 31, 2003), either directly from the federal government or indirectly from a recipient of federal funds, OMB Circular A133 requires that Grantee shall have an audit made in accordance with its provisions.

If Grantee is a nonprofit institution and expends \$300,000 (\$500,000 for fiscal years ending after December 2003) or more during the year but receives awards under only one program, and no applicable laws, regulations or grant agreements require a financial statement audit, Grantee may elect to conduct a program-specific audit in accordance with OMB Circular A-133.

If Grantee expends less than \$300,000 (\$500,000 for fiscal years ending after December 31, 2003) a year in Federal awards, it is exempt from Federal audit requirements for that year, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO) Grantees subject to particular audit requirements by the laws and regulations governing the programs in which it participates shall comply with those requirements.

Period Subject to Audit and Audit Frequency A single audit or organization-wide audit made in accordance with OMB Circular A133 shall encompass the fiscal period of the Grantee and shall be performed on an annual basis. Audits of institutions of higher education may be performed every two years; however, annual audits are encouraged.

Audits made on a program-by-program basis shall cover the period as specified in the applicable laws and regulations.

Submission of Audit Reports to the Commonwealth If a single audit or organization-wide audit is made in accordance with the provisions of OMB Circular A133, Grantee must submit the audit report within 30 days after completion of the audit, but the audit shall be completed and the report submitted not later than 13 months after the end of the Grantee's fiscal year. For audits made on a program-by program basis, Grantee shall have an audit made and the report submitted in accordance with the applicable laws and regulations.

Grantee shall submit five copies of the audit report to the Office of the Budget, Single Audit Coordinator at:

Commonwealth of Pennsylvania/Office of the Budget/Comptroller Operations/Bureau of Audits Wagner Building/931 North Seventh Street Harrisburg, PA 17120

After processing of the report by Comptroller Operations, a copy of the audit report will be sent to the PA Council on the Arts.

General Post-Audit Provisions Grantee shall prepare a Corrective Action Plan to address all material findings of noncompliance or internal control weaknesses disclosed in the audit report. For each finding noted, the Corrective Action Plan should include (1) a description of the finding; (2) the specific steps to be taken to correct the situation or specific reasons why corrective action is not necessary; (3) a timetable for performance of the corrective action steps; and (4) a description of monitoring to be performed to ensure that the steps are taken. The Corrective Action Plan must be submitted together with the audit report, in accordance with the procedures stated above.

Audit working papers and audit reports shall be retained by the Grantee's auditor for a minimum of three years from the date of the auditor report, unless the Grantee's auditor is notified in writing by the Commonwealth or the cognizant Federal agency to extend the retention period. Audit working papers shall be made available upon request to authorized representatives of the Commonwealth, the cognizant Federal agency or the General Accounting Office.

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6. UNENCUMBERED FUNDS

The grantee should not incur expenses with grant funds after the termination date of the grant. All expenses must be incurred, and funds distributed, between the project beginning and project ending dates specified in the grant award letter. Therefore, any grant funds not dispersed by the project ending date of the grant period must be returned to PCA.

7. AGENT AND MANAGER FEES Grantee agrees that all professional performers, artists and supporting personnel employed on projects or productions related to this grant will be paid without any direct or indirect rebate or deduction to the grantee, or to any other person or entity acting on behalf of the grantee, unless such rebate or deductions are disclosed on grantee's application and financial report.

8a NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, SEX OR AGE under the provisions in Management Directive 215.16 regarding Contractor Compliance Program, Grantee 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 Grantee, a subgrantee, a contractor, a subcontractor, or any person acting on behalf of the Grantee shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this commonwealth who is qualified and available to perform the work to which the employment relates.
- b. The Grantee, any subgrantee, contractor or any subcontractor or any person on their behalf shall not in any manner discriminate against or intimidate any of its employees on account of gender, race, creed, or color.
- c. The Grantee, any subgrantee, contractor or any subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- d. The Grantee, any subgrantee, contractor or any subcontractor shall not discriminate by reason of gender, race, creed, or color against any subgrantee, contractor, subcontractor or supplier who is qualified to perform the work to which the grant relates.
- e. The Grantee, any subgrantee, any contractor or any subcontractor shall, within the time periods requested by the commonwealth, furnish all necessary employment documents and records and permit access to their books, records, and accounts by the granting agency and the Bureau of Minority and Women Business Opportunities (BMWBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. Within 15 Days after award of any grant, the Grantee shall be required to complete, sign and submit Form STD-21, the "Initial Contract Compliance Data" form. Grantees who have fewer than five employees or whose employees are all from the same family or who have completed the STD-21 form within the past 12 months may, within the 15 days, request an exemption from the STD-21 form from the granting agency.
- f. The Grantee, any subgrantee, contractor or any subcontractor shall include the provisions of this Nondiscrimination/Sexual Harassment

Clause in every subgrant agreement, contract or subcontract so that those provisions applicable to subgrantees, contractors or subcontractors will be binding upon each subgrantee, contractor or subcontractor.

g. The commonwealth may cancel or terminate the grant agreement and all money due or to become due under the grant agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the granting agency may proceed with debarment or suspension and may place the Grantee, subgrantee, contractor or subcontractor in the Contractor Responsibility File.

8b. PROVISIONS CONCERNING THE AMERICANS WITH DISABILITIES ACT

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 contract or from activities provided for under this contract. As a condition of accepting and executing this contract, the Contractor agrees to comply with the "General Provisions 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 contracts with outside contractors.
2. The contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the contractor's failure to comply with the provisions of paragraph 1, above.
3. The contractor shall include the provisions of paragraph 1 above in every sub-contract under this Agreement so that such provision binds each sub-contractor's.

9. FAIR LABOR STANDARDS

Grantee agrees that:

- a. All professional performers and related or supporting personnel employed on projects or productions which are financed in whole or in part under this grant will be paid, without subsequent deduction or rebate on any account, not less than the minimum compensation as determined by the Secretary of Labor to be the prevailing minimum compensation for persons employed in similar activities.
- b. No part of any project or production which is financed in whole or in part under this grant will be performed or engaged in under working conditions which are unsanitary, hazardous or dangerous to the health and safety of the employees engaged in such project or production. Compliance with the safety and sanitary laws and applicable anti-pollution regulations and standards of the Commonwealth of Pennsylvania shall be **prima facie** evidence of compliance with the above stipulations.

10. GRANTEE INTEGRITY CLAUSE

Grantees must adhere to the policies of the Commonwealth of Pennsylvania Management Directive 215.8 amended listed below.

1. Definitions.

- a. **Commonwealth Agency.** An executive or independent agency as defined by the *Commonwealth Procurement Code*, 62 Pa.C.S. Section 103.

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b. **Contract.** A legal binding agreement between a contractor and a commonwealth agency for the procurement of supplies, services, and/or construction.

c. **Contractor Integrity Provisions.** Contractual provisions that promote standards of honesty and integrity by which contractors and grantees must conduct themselves to foster public confidence when executing a commonwealth agency contract.

d. **Waiver.** A written document justifying an exception to the policy requirement to include the contractor integrity provisions in a contract. The exception may include approved revisions to the contractor integrity provisions or complete removal of the 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 procurement process.

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 with the Commonwealth.

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 Contractor employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all Contractor employees.

3. Contractor, its affiliates, agents and employees shall not influence, or attempt to influence, any Commonwealth employee to breach the standards of ethical conduct for Commonwealth employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; and the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.*, or to breach any other state or federal law or regulation.

4. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person at the direction or request of any Commonwealth official or employee.

5. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person, the acceptance of which would violate the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.* or any statute, regulation, statement of policy, management directive or any other published standard of the Commonwealth.

6. Contractor, its affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any Commonwealth official or employee.

7. Contractor, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in the contract.

8. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to 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.

9. Contractor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Contractor under this contract without the prior written approval of the Commonwealth, except as required by the *Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104*, or other applicable law or as otherwise provided in this contract. Any information, documents, reports, data, or records secured by Contractor from the Commonwealth or a third party in connection with the performance of this contract shall be kept confidential unless disclosure of such information is:

- a. Approved in writing by the Commonwealth prior to its disclosure; or
- b. Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior Commonwealth approval; or
- c. Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
- d. Necessary for purposes of Contractor's internal assessment and review; or
- e. Deemed necessary by Contractor in any action to enforce the provisions of this contract or to defend or prosecute claims by or against parties other than the Commonwealth; or
- f. Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain: or
- g. Otherwise required by law.

10. Contractor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has not been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the Commonwealth agency contracting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:

- a. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
- b. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Contractor or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:

- (1) obtaining;
- (2) attempting to obtain; or

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(3) performing a public contract or subcontract.

Contractor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.

c. Violation of federal or state antitrust statutes.

d. Violation of any federal or state law regulating campaign contributions.

e. Violation of any federal or state environmental law.

f. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.

g. Violation of the *Act of June 2, 1915 (P.L.736, No. 338)*, known as the *Workers' Compensation Act, 77 P.S. 1 et seq.*

h. Violation of any federal or state law prohibiting discrimination in employment.

i. Debarment by any agency or department of the federal government or by any other state.

j. Any other crime involving moral turpitude or business honesty or integrity.

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

11. If this contract was awarded to Contractor on a non-bid basis, Contractor must, (as required by *Section 1641* of the *Pennsylvania Election Code*) file a report of political contributions with the Secretary of the Commonwealth on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions known to Contractor by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:

a. Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed an aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or

b. Any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

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

12. Contractor shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq.*, and the regulations promulgated pursuant to that law. Contractor employee activities prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subjects the Contractor employees to the registration and reporting requirements of the law. Actions by outside lobbyists on Contractor's behalf, no matter the procurement stage, are not exempt and must be reported.

13. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these provisions has occurred or may occur, including but not limited to

contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or Commonwealth Inspector General in writing.

14. 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.

15. Contractor shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Contractor non-compliance with these provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of the Office of Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to 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 refers to or concern this contract.

16. 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.

17. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Paragraph 17.

a. "Confidential information" means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to Contractor from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through a act or omission of Contractor; or e) has not been independently developed by Contractor without the use of confidential information of the Commonwealth.

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 pre-qualification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this contract.

c. "Contractor" means the individual or entity that has entered into this contract with the Commonwealth, including those directors, officers, partners, managers, and owners having more than a five percent interest in Contractor.

d. "Financial interest" means:

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(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.

e. "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.

f. "Immediate family" means a spouse and any unemancipated child.

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.

h. "Political contribution" means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

11. REGISTRATION WITH THE BUREAU OF CHARITABLE ORGANIZATIONS AND FEDERAL REQUIREMENTS

Under the provisions of Act 185, all grant recipients who engage in the solicitation of funds **must** register with the Bureau of Charitable Organizations of the Pennsylvania Department of State. Information regarding registration responsibilities, fees and forms may be obtained from the Bureau by calling 1-800-732-0999.

When grantees are recipients of federal grants and contracts, through the PCA, those grantees must comply with additional registration and identification requirements under the Federal Funding Accountability and Transparency Act (Pub. L. 109-282).

12. LOBBYING

In accordance with a Congressional directive, grantees are requested to note the following provisions of Federal Law regarding the use of National Endowment for the Arts funds for lobbying activities.

18 U.S.C. Sec. 1913 **Lobbying with appropriated moneys** - No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member of Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

13. ASSUMPTION OF LEGAL RESPONSIBILITY BY GRANTEE

Grantee assumes sole legal responsibility for any claims for damages asserted against the Commonwealth of Pennsylvania, its instrumentality, the Pennsylvania Council on the Arts, or any employees thereof, resulting

from the negligence or willful actions of grantee involving copyright infringements, violation of personal privacy, misappropriation of ideas or rights and literary piracy or plagiarism, excepting claims arising from matters with respect to which grantee has advised the PCA in writing of the legal issues involved and the PCA, by its specific appraisal in writing, has assumed the risks thereof. The assumption of legal responsibility by grantee shall include but not be limited to the assertion of defenses on the part of the Commonwealth of Pennsylvania, its instrumentality, the PCA and employees thereof, and the costs of such assertion. The PCA will give grantee prompt notice of such claims brought to its attention and grantee may control the defense or settlement thereof.

However, the Commonwealth of Pennsylvania reserves the right for itself, its instrumentality, the PCA or the employees thereof, to participate in the defense of any such claim through its Attorney General at its own expense.

14. TERMINATION OF CONTRACT

The Commonwealth of Pennsylvania reserves the right to terminate this contract at any time, by giving 30 days written notice to the contractor, for any of the following reasons:

- a. Nonavailability of funds;
- b. Nonperformance of the services as stated in this contract;
- c. Noncompliance with any of the terms and conditions of this contract or the terms and conditions contained in any other contract with the Commonwealth of Pennsylvania or the United States of America, including the National Endowment for the Arts;
- d. The Commonwealth shall have the right to terminate the Contract for its convenience if the Commonwealth determines termination to be in its best interest. Upon termination of the contract, the grantee shall be prohibited from spending or disbursing grant funds and shall return immediately to PCA all remaining unused grant funds.

15. OFFSET PROVISIONS FOR COMMONWEALTH CONTRACTS

The contractor agrees that the Commonwealth may set off the amount of any state tax liability or other debt of the contractor or its subsidiaries that is owed to the Commonwealth and not being contested on appeal against any payments due the contractor under this or any other contract with the Commonwealth.

16. 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.

- a. 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

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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 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 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.

d. 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.

e. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of 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.

f. The Contractor may obtain a current list of suspended and debarred Commonwealth contracts 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, Pennsylvania 17125; Telephone number: (717) 783-6472 or FAX number (717) 787-9138.

17. HOLD HARMLESS CLAUSE

The contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth from damages to property or injuries (including death) to any person(s) and other losses, damages, expenses, claims, demands, suits and actions by any party against the Commonwealth in connection with the work performed by the contractor.

18. NONDISCRIMINATION CLAUSE

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

a. Contractor shall not discriminate against any employee, applicant for employment, independent contractor, or any other person because of race, color, religious creed, ancestry, national origin, age or sex. Contractor shall take affirmative action to insure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, handicap, ancestry, national origin, age, or sex. Such affirmative action shall include, but is not limited to:

employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Contractor shall post in conspicuous places, available to employees agents, applicants for employment, and other persons, a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

b. Contractor shall, in advertisements or requests for employment placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, handicap, ancestry, national origin, age or sex.

c. Contractor shall send each labor union or workers' representative in which it has collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by contractor.

d. It shall be no defense to a finding of noncompliance with this nondiscrimination clause that contractor had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.

e. Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that contractor will be unable to meet its obligations under this nondiscrimination clause, contractor shall then employ and fill vacancies through other nondiscriminatory employment procedures.

f. Contractor shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of contractor's noncompliance with the discrimination clause of this contract or with any such laws, this contract may be terminated or suspended, in whole or in part, and contractor may be declared temporarily ineligible for further Commonwealth contracts, and other sanctions may be imposed and remedies invoked.

g. Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records, and accounts by the contracting agency for purposes of investigation to ascertain compliance with the provisions of this clause. If contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency.

h. Contractor shall actively recruit minority and women subcontractors or subcontractors with substantial minority representation among their employees.

i. Contractor shall include the provisions of this nondiscrimination clause in every subcontract, so that such provisions will be binding upon each subcontractor.

j. Contractor obligations under this clause are limited to the contractor's facilities within Pennsylvania or, where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

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19. DISBURSEMENT OF GRANT FUNDS

For AOAP Grantees:

Upon completion of the Commonwealth approval process, the Pennsylvania Council on the Arts and or the Commonwealth may disburse the entire full grant award amount in one payment, or may disburse in payments. Disbursement of funds is contingent upon the following conditions being met:

- a. Availability of state funds.
- b. Grantee's compliance with the deadlines established by the Pennsylvania Council on the Arts. Failure to meet these deadlines may result in forfeiture by the Grantee of all or part of the grant award amount.

20. GRANTEE'S COMPLIANCE WITH DEADLINES

Failure to meet one or more of the established deadlines (including, but not limited to, Full or Interim Applications, Final Reports, Grant Award Agreement paperwork, or any other forms required by the PCA) may severely jeopardize all or some of grantee's award. Furthermore grantee may be subject to removal from the AOAP Track or other PCA grant programs.

21. INQUIRIES

If for any reason grantee is unable to comply with any condition or administrative requirement of this grant or has questions about the same, grantee should contact the Council Office.