

ACT 101 PROGRAM PARTICIPATION AGREEMENT

THIS ACT 101 PROGRAM PARTICIPATION AGREEMENT (this "Agreement"), is made this _____ day of _____, 20_____, by and between the Pennsylvania Higher Education Assistance Agency ("PHEAA"), a public corporation and government instrumentality organized under the law of the Commonwealth of Pennsylvania, and _____ ("Institution").

WITNESSETH

WHEREAS, PHEAA's primary purpose is to promote Pennsylvania residents' access to higher educational opportunities through its administration of state, federal and private financial aid programs;

WHEREAS, in Section 7 of Act 26 signed June 30, 2011, the Pennsylvania General Assembly amended Section 1738-E of the Act of April 9, 1929 (P.L. 343, No. 176), known as the Fiscal Code, as added on July 17, 2007 (P.L. 141, No. 42), which, *inter alia*, transferred the rights, powers and duties exercised by the Pennsylvania Secretary of Education under the former act of August 31, 1971 (P.L. 423, No. 101) known as the Higher Education Equal Opportunity Act, including its administrative regulations promulgated thereunder, as may be amended, and in effect from time to time ("Act 101"), to PHEAA;

WHEREAS, pursuant to such authority, PHEAA is permitted to contract with eligible institutions of higher education throughout the Commonwealth of Pennsylvania for the awarding of higher education equal opportunity program grants to offer eligible students services such as remedial learning services, counseling services, and tutorial services, all as more fully set forth in Act 101 regulations and any policies, rules and procedures established by PHEAA (the "Act 101 Program");

WHEREAS, Institution is an institution of higher education that wishes to participate in the Act 101 Program;

NOW THEREFORE, in consideration of the promises and representations as stated herein, and intending to be legally bound hereby, PHEAA and Institution (sometimes referred to herein individually as a "Party" or together as the "Parties") hereby agree as follows:

1. **ACT 101 APPROPRIATION.** Based on the appropriation allocated to PHEAA by the Commonwealth of Pennsylvania ("Act 101 Appropriation"), PHEAA agrees to allocate to Institution an amount to be set forth in an annual allocation letter from PHEAA to Institution. The Institution acknowledges that such allocation, if any, is based upon the Act 101 Appropriation, and is made to Institution only to the extent that and/or when such an Act 101 Appropriation is made.
2. **INSTITUTION OBLIGATIONS.**
 - a. Institution agrees to comply with all applicable requirements governing the Act 101 Program as set forth in Act 101 regulations, this Agreement and in the PHEAA Act 101 Program Guidelines ("Act 101 Program Guidelines"), and agrees to use the funds provided under this Agreement in compliance with Act 101 regulations, this Agreement and in the Act 101 Program Guidelines. The Act 101 Program Guidelines is incorporated herein by reference and as may be modified or amended in its entirety from time to time. Institution agrees that PHEAA may unilaterally modify or amend the Act 101 Program Guidelines in whole or in part at any time and from time to time, and that its agreement to adhere to the Act 101 Program Guidelines applies to such Act 101 Program Guidelines in effect during each applicable period. PHEAA shall provide any updated Act 101 Program Guidelines to Institution.
 - b. Institution agrees to provide PHEAA with an annual report as set forth in more detail within the Act 101 Program Guidelines.
 - c. If any portion of the allocation identified in Paragraph 1 for an academic year has not been utilized or matched by Institution, then PHEAA shall revise the allocation to the amount actually used/matched. Institution agrees that any amount received by the Institution that is not expended or matched by June 30 will be returned to PHEAA no later than September 1 of that year.

3. CONFIDENTIALITY. Institution agrees and understands that it may not disclose to unauthorized persons any non-public personal information from any student's record to which the Institution has access as a result of this Agreement ("Confidential Information"). Institution agrees not to utilize any Confidential Information, unless it is necessary to do so in order to fulfill an obligation under this Agreement. Institution agrees that it is responsible to monitor and control access to Confidential Information, and shall inform its employees, representatives and agents that they may be liable in a civil suit for damages to an aggrieved person if they fail to maintain the confidentiality of Confidential Information. Institution agrees that it will not sell, disclose, transfer, nor rent any Confidential Information to any third party nor will it use any Confidential Information on behalf of any third party, without the express written permission of PHEAA and Act 101 Program student participants, as applicable. Institution agrees that any violation of this Section by Institution may be considered a breach of confidentiality resulting in the immediate termination of this Agreement.

4. TERM AND TERMINATION.

(a) This Agreement is effective upon approval as to form and legality by the Commonwealth of Pennsylvania Office of Attorney General, and shall remain in effect until terminated as set forth below or as set forth within this Agreement.

(b) Institution understands and agrees that:

(i) PHEAA reserves and may unilaterally exercise the right to terminate this Agreement for any reason without liability by providing Institution thirty (30) calendar days written notice.

(ii) Institution may terminate this Agreement by providing PHEAA with ninety (90) calendar days written notice or by notifying PHEAA in writing of its desire not to participate in the Act 101 Program for a future academic year by no later than July 1 prior to the year in which it desires to terminate participation; however, Institution agrees that any such termination by it will not be effective until Institution's completion of any and all of its obligations set forth in this Agreement.

(iii) PHEAA's performance and obligations under this Agreement are contingent upon receipt of the Act 101 Appropriation. Should the Act 101 Appropriation be reduced or eliminated for any reason, PHEAA may restrict, reduce, or terminate this Agreement immediately. In such instance(s) and when feasible, PHEAA will notify and consult with Institution in a timely manner.

(iv) This Agreement may be terminated immediately without liability at any time by PHEAA if required by the Higher Education Act of 1965, 20 U.S.C. 1001 et seq., and the effective administrative regulations promulgated thereunder, as amended from time to time, and any rule, regulation, instruction or procedure issued by PHEAA or any other applicable federal or state law.

(c) If requested by PHEAA, Institution shall erase, destroy, or return to PHEAA any copies of any Confidential Information and proprietary information belonging to PHEAA.

(d) If requested by PHEAA, Institution shall cease to use any intellectual property of PHEAA utilized by Institution pursuant to the terms of this Agreement.

5. AUDITING. PHEAA shall have the express right hereunder to audit Institution's records, data compilations, data sources, computer files, web files, and any other information records, computer systems, in whatever form so arising containing information regarding the Act 101 Program and Institution's performance under the terms and requirements of this Agreement, including the Act 101 Program Guidelines in effect for the period(s) being audited, upon providing Institution thirty (30) days prior notice.

6. INDEMNIFICATION. Institution agrees to indemnify and hold PHEAA (and its officers, directors, agents, servants and employees) harmless with regard to any liability that may arise from the Institution's access to and/or use or misuse of the information obtained from PHEAA records. Institution will be responsible to PHEAA for any and all claims, lawsuits, demands, costs or other expenses, including but not limited to attorneys' fees resulting from or in any way related to: (a) Institution's breach of any provision of this

Agreement; or (b) any negligent act or omission of such Institution or Institution's employees, agents, or volunteers, including but not limited to the improper use or disclosure of confidential information.

- 7. **REPRESENTATIONS.** Institution declares under penalty of the criminal laws of the Commonwealth of Pennsylvania, that the application as well as any information that is subsequently submitted has been examined by Institution and to the best of Institution's knowledge, such information is true, correct and complete.
- 8. **NON-DISCRIMINATION.** Institution agrees not to discriminate on the basis of race, color, religion, sex or national origin and to take affirmative action to ensure that student recipients are treated without regard to their race, color, religion, sex, or national origin.
- 9. **RIGHT TO KNOW.** Institution understands and agrees that any information, proprietary or otherwise, which is provided by Institution to PHEAA may be subject to disclosure by PHEAA under Pennsylvania's Right to Know Law, Act of June 21, 1957, P.L. 390, as may be amended, and in effect from time to time, P.S. §67.101 et. seq. Institution accordingly waives and releases PHEAA from any actions at law or equity from compliance with such disclosure.
- 10. **NOTICE.** Any notice or other communication which may be given hereunder must be in writing and shall be deemed duly given when delivered in person, or three (3) days after mailing by regular or first class mail, or when sent by certified mail, registered mail, express mail, Federal Express or similar overnight delivery service company, postage or express charges prepaid, addressed to the intended recipient as set forth in this Paragraph 10.

The person signing this Agreement on behalf of Institution certifies that he/she has designated the below-listed individual as the "Act 101 Program Coordinator" for Institution.

Institution "Act 101 Program Coordinator": _____

Institution Notice Address: _____

PHEAA Notice Address: PHEAA - Special Programs
1200 North Seventh Street, HQ 3A
Harrisburg, PA 17102

- 11. **AMENDMENT; ASSIGNMENT.** This Agreement may not be altered or modified in any manner unless by writing, signed by both Parties. Neither Party may assign the Agreement nor the rights hereunder to any third party without the prior express written approval of the other Party except as contemplated and described elsewhere in this Agreement.
- 12. **COUNTERPARTS.** This Agreement may be executed in counter-parts and all such counter-parts shall constitute the entire Agreement.
- 13. **SEVERABILITY; WAIVER.** If any provision of this Agreement is held invalid, the remainder of this Agreement shall remain in full force and effect and unaffected by the invalidation of any such provision. No waiver by any Party herein of any condition, or of the breach of any term, covenant, representation, or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of the breach of any other term, covenant, representation, or warranty set forth in this Agreement.

14. INDEPENDENT CONTRACTOR. Each Party is performing pursuant to this Agreement in an independent contractor capacity and shall not act or be deemed to act as officers, employees, or agents of the other Party in its performance under this Agreement.

15. AUTHORITY. Each of the undersigned represents that he or she has the authority to execute the Agreement on behalf of the respective Party.

16. APPLICABLE LAW. This Agreement is made pursuant to and shall be governed by the laws of the Commonwealth of Pennsylvania, without reference to choice of law rules.

17. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and all prior agreements and understandings (whether oral or written) between the Parties on the same subject are hereby rescinded and rendered null and void by this Agreement.

WHEREFORE, the Parties have caused this Agreement to be executed by its authorized officers on the date and year first written above.

PHEAA

INSTITUTION

By: _____

By: _____

Name: Nathaniel D. Hench

Name: _____

Title: Senior Vice President of Public Affairs

Title: _____

Federal Tax ID: _____

Approved as to form and legality.

Approved as to form and legality.

PHEAA Legal Counsel

Deputy Attorney General